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—PARSONS.

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## DIRECT LEGISLATION MEANS

The veto power in the hands of the people.

The adopting power in the people's laws.

The proposing and enacting power in the hands of the  
sovereign people.

The end of corrupt legislation.

The death of the lobby.

The development of good citizenship.

The effectuation of popular sovereignty, or making popular  
sovereignty a fact instead of a name and a  
theory.

Government by and for the people.



# DIRECT LEGISLATION

OR

## THE VETO POWER IN THE HANDS OF THE PEOPLE

BY

PROF. FRANK PARSONS

LECTURER IN BOSTON UNIVERSITY LAW SCHOOL; MEMBER AMERICAN SOCIAL SCIENCE  
ASSOCIATION AND AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE;

AUTHOR OF "THE WORLD'S BEST BOOKS," "THE TELEGRAPH  
MONOPOLY," "RATIONAL MONEY," "THE CITY  
FOR THE PEOPLE," ETC.

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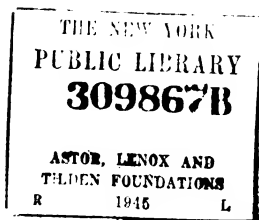
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1. Legislation, Direct - U.S.

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CORRUPT LEGISLATION  
WOULD PRACTICALLY CEASE, AND  
FEW WARS  
WOULD COME TO PASS IF THE PEOPLE HAD THE POWER  
TO CALL FOR A DIRECT VOTE AT THE POLLS  
ON SUCH MEASURES AS THEY  
DEEMED BEST TO HAVE SUBMITTED  
FOR THEIR APPROVAL OR  
REJECTION



## PREFACE.

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This book is designed to aid (1) those who desire to understand the nature and meaning of direct legislation in the shortest possible time, and (2) those who wish a full discussion of the subject from which they may secure abundant materials for articles and addresses.

The first chapter contains a short treatment of direct legislation in its broadest relations, including its effects upon war, trusts, finance, and other national questions, and the method of its use in federal elections. This chapter is of special interest in connection with the direct legislation planks in the Kansas City and Sioux Falls platforms.

Chapter II summarizes twenty of the chief reasons for the extension of the use of the referendum in city, state, and national affairs.

Chapter III affords an exhaustive statement of the history, operation, and results of direct legislation in this country and in Switzerland, together with all the arguments for the extension of Direct Legislation, and a thoro discussion of the objections that have been raised against it.

The historical portions and part of the facts and arguments are restatements and condensations of matter printed in previous works, but many of the most effective arguments and modes of presentation are wholly original and will not be found in the work of any preceding writer.

FRANK PARSONS.

Boston, Mass.

THE PEOPLE  
ARE ASKED TO VOTE  
ON STATE AND NATIONAL PLATFORMS  
THAT IS, THEY ARE ASKED TO VOTE  
ON FOUR OR FIVE OR A DOZEN QUESTIONS  
ALL IN A HEAP.  
WHY NOT ASK THEM  
TO SAY YES OR NO  
ON EACH ISSUE SEPARATELY,  
AND MAKE THEIR DECISION BINDING.  
THEN YOU HAVE  
DIRECT LEGISLATION, OR REAL AND EFFECTIVE  
GOVERNMENT BY THE PEOPLE.

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WHO  
SHOULD DETERMINE  
WHAT QUESTIONS SHALL BE SUBMITTED TO THE PEOPLE—  
THE PEOPLE THEMSELVES OR THEIR SERVANTS?  
WHO SHOULD DETERMINE  
WHAT MATTERS A SOVEREIGN IS TO ACT UPON—  
THE SOVEREIGN HIMSELF OR HIS AGENTS?  
AT PRESENT

(EXCEPT IN A FEW CASES COVERED BY OUR CONSTITUTIONS)  
THE PEOPLES' "AGENTS" DECIDE WHAT QUESTIONS, IF ANY,  
SHALL BE SUBMITTED TO THE VOTERS;  
WHEREBY SAID "AGENTS" HAVE GOVERNMENT, LAW, BUSINESS,  
PROPERTY AND PRIVILEGE, PRACTICALLY IN THEIR OWN HANDS,  
AND HAVE BECOME MASTERS INSTEAD OF SERVANTS, MAKING LAWS  
TO SUIT THEMSELVES AND MANAGING PUBLIC AFFAIRS FOR THEIR  
PRIVATE PROFIT, EXERCISING IN FACT, THE CONTROL AND SOVEREIGNTY  
THAT OF RIGHT BELONG TO THE PEOPLE, AND TRANSFORMING THE  
GOVERNMENT INTO AN ELECTIVE ARISTOCRACY IN PLACE OF A DEMOCRACY.

TO RESTORE  
THEIR LOST SOVEREIGNTY  
TO THE PEOPLE, IT IS ONLY NECESSARY TO  
TRANSFER THE OPTION  
OF ORDERING A REFERENDUM OR VOTE AT THE POLLS,  
FROM THE LEGISLATORS TO THE PEOPLE;  
OR ENLARGE THE OPTION  
SO THAT EITHER THE LEGISLATORS OR THE PEOPLE  
MAY ORDER ANY QUESTION TO THE POLLS  
FOR FINAL DECISION  
BY THE VOTERS.

CHAPTER I.  
GOVERNMENT BY THE PEOPLE  
OR  
DEMOCRACY AND DIRECT LEGISLATION.

The National Democratic Platform, adopted at Kansas City, says, "We favor direct legislation wherever practicable." It is also endorsed by the Populists and by many thoughtful Republicans. The National endorsement is the fitting culmination of the strong and rapidly growing movement for direct legislation in our states and cities—38 state platforms, chiefly Democratic and Populist, and over 3,000 newspapers and magazines of various complexion had already declared in favor of direct legislation. Its advocacy by two great parties and by leading men of the other parties is a fact of deepest moment because of the nature and effects of the measure itself, and because of the resulting indications as to the character of the political leaders who controlled the conventions adopting direct legislation planks.

1. WHAT IS DIRECT LEGISLATION?

Laws and ordinances (other than mere routine, and urgency measures necessary for the immediate preservation of the public health, peace, or safety) must not go into effect for a month or more after passage, and if during that time a reasonable percentage of voters sign a petition for the referendum on any law or ordinance, it shall be submitted to the people for final decision at the polls. Voters must also have the right to "initiate," or propose a law or ordinance, and bring the issue before the people for decision. This is simply an extension to city and state of the fundamental rights of voters in every New England town, where any 10 voters by petition may require the insertion of any subject in the warrant, and bring the matter to a vote in town meeting.

These methods, called the initiative and referendum, enable the people to stop laws they do not want, and secure laws they do want. In other words they establish government by the people, instead of government by delegates. The delegates (congressmen, legislators and councilmen) will be elected and will pass laws as at present, but their vote will not be final. The people can overrule them, veto, and instruct them. The people will be stronger than the delegates not merely on election day, but every day, and in case of conflict the people's will will prevail, and not the delegates' will as so often happens now.

The best plan is to establish the initiative and referendum by constitutional amendment, so that they may be secure from legislative interference. From the standpoint of such an amendment the referendum may be defined as the right to have a measure referred to the people for final decision at the polls. The reference may be made *obligatory, as in the case of constitutional amendments, and important franchise grants in some of our states*, or it may be made to *depend upon a petition of a moderate percentage of the voters*, or upon the order of the mayor, governor, president, or judge, or the order of either house or a certain number of votes in either house.

The *initiative* is the right to propose a law by petition which in due course brings the measure before the people for adoption or rejection.

The initiative and referendum together constitute direct legislation and yield in importance to no other measures whatever, for they enable the people to stop any law they do not want before it goes into effect, or annul it after it has gone into effect, if a trial of it shows it objectionable, and they also enable the people to create and establish any law they desire without the necessity of waiting till Congress or Councils see fit to act in the matter—a waiting that is often very long where the measure desired by the people opposes the interests

of powerful corporations who have large "influence" with the legislators. The people may even establish a law against the express vote of Congress, or affirm a law declared unconstitutional by the Supreme Court.

Direct legislation will give Uncle Sam the means of controlling the movements of the great train in which he and his family are journeying thru the years,—he can turn off the steam and put on the direct air brake if the engineers and conductors he has hired to manage the train attempt to run it on a road he does not wish to travel, and if they go to sleep, or are held up, or in any way fail to move on the line he desires, he can fix the switch, and turn on the power to suit himself.

## II. POPULAR SOVEREIGNTY IMPOSSIBLE WITHOUT DIRECT LEGISLATION.

Sovereignty means control. Where the will of a legislative body may prevail over the will of the people, it is the legislative body that is sovereign and not the people. When the Broadway Surface Railway Company spent \$500,000 buying aldermen in New York, and thereby persuaded them to give the company, without payment to the city, a street railway franchise on Broadway for which another company had offered the city a million dollars (and which was worth a great many millions), it was not government by the people, but government by politicians and monopolists against the people. If the citizens of New York had possessed the initiative and referendum, the grant would have been stopped—probably it would never have been attempted, for no company would pay its dollars to buy legislation certain to be nipped in the bud by a petition and referendum vote. Recently the Philadelphia Councils, "bribed by the rich to rob the poor," have given to private parties a lease of the city's gas works and franchises against the indignant protest of the

people. The question of raising a loan for various public improvements was submitted to the people, but Councils refused to take a referendum on the gas lease. A test vote

### THE POLITICIANS AS MASTERS,

—referring constitutional amendments to the people as required by organic law, and for the rest submitting what they choose and enacting what they like without reference to the voters.



THE PEOPLE AND THE POLITICIANS. I.

POLITICIAN TO VOTER:—State your opinion on these matters, please

taken by *The Inquirer* in an average ward just before the lease was made, resulted in 32 ballots for and 2,583 against it—81 to 1 against the action of Councils. Councils were flooded with petitions, mass-meetings were held and the press



was practically a unit against the lease. But, the legislators were acting as servants of the corporations and not as agents of the people, tho drawing salaries as such, and they gave

## THE PEOPLE AS MASTERS,

—through Direct Legislation by which the OPTION of ordering a referendum is transferred from the legislators to the voters. It puts the *veto power* in the hands of the people.



## THE PEOPLE AND THE POLITICIANS. II.

**VOTER TO POLITICIAN :—**Let me see those bills in your pocket also.

**POLITICIAN:—**Hold on there! You don't know enough to vote on those.

away the people's property to their co-conspirators in spite of all the people could do. The people must wait till the next election even to turn out the rascals, and even that would

not bring back the property for such franchise grants become valid contracts enforceable in the courts as soon as the stock and bonds are sold to innocent parties. If Philadelphia had had the referendum, however, the lease would have been stopped—instead of holding useless mass-meetings and sending in impotent petitions, they would have sent in a *mandatory* petition for a referendum vote on the lease and snowed it under at the polls. Legislators and councilmen are willing now to submit measures in respect to which they are acting honestly, but they do not submit gas grabs and franchise steals, and when asked to give the people a vote on such matters the legislators and councilmen declare that the people do not know enough to vote on these things—they know enough to vote on constitutional amendments, but a railway or electric light bill is beyond their comprehension.

The Ohio Legislature passed a law allowing 50-year franchises, and before the indignant people could elect a new legislature to repeal the law, the Councils of Cincinnati granted a 50-year street-railway term which became an irrevocable contract to burden the present generation and the next. The Illinois Legislature under pressure from Chicago companies also passed a 50-year law, and it was only by such demonstrations as put the Boodle Councilmen in fear of their lives that the citizens of Chicago prevented a 50-year extension of street railway privileges in that city. With the referendum there would have been no grant in Cincinnati; and in Chicago, instead of practically mobbing the legislators, the people could have settled the matter by mandatory petition and a vote at the polls.

The Ohio and Illinois franchise laws, and the Broadway franchise, Philadelphia lease and Cincinnati grant are but samples of a great mass of legislation for private purposes against the people's interests. In such enactments, there is no element of government by the people—they are illustrations of government by councilmen and legislators acting as the agents of the corporations that have bought them, or retained them,—government by politicians and monopolists not gov-

ernment by the people. It was not the people's wish to give away the Philadelphia gas works, or the Broadway franchise, or grant 50-year terms. Councils and Legislatures made strenuous efforts to hide the considerations paid them by the companies, and to conceal the real nature of the transactions, conscious that they were acting against their public duty and the people's interest. Yet the people had no means of stopping these iniquitous grants, and once enacted they became irrevocable contracts, and if the stock and bonds have been sold to innocent parties they can be enforced in the courts, even tho the company's charter be revoked by the legislature (111 N. Y., 1). With the referendum such outrages would be impossible.

The case is stronger still in respect to national government. There would have been no war of conquest in the Philippines if the people could have called for a referendum on it at the start. The larger part even of those who will vote to sustain the administration would have voted against such a policy if it had come to the people before it became a part of the Republican record. The Rebellion might have had a short existence, or none at all, if a referendum could have been taken on the issues involved as Lincoln desired. England would probably not have gone to war with the Transvaal if the people could have called the question before them at the start. In fact there would be few wars if the common people who have to do the fighting and the paying were allowed to decide the matter, or if every legislator who voted for war were obliged to enlist, and indeed no able bodied man ought to vote for war unless he deems the cause so great and just that he would be willing to march in the front rank to battle.

The fugitive slave law would have quietly yielded to the referendum, instead of remaining to embitter our people and help to bring on the war. The income tax decision would have been speedily swept from the record if the people could have called for a referendum on the matter. Postmaster General John Wanamaker could easily have carried his postal

telegraph bill in 1890 if he could have appealed from Congress to the people for a specific vote on the question—millions of voters have petitioned for a postal telegraph and only the telegraph companies and their attorneys opposed it. Several times the House has passed an amendment providing for direct election of United States Senators, but every time the Senate turns the measure down. The present system compels the election of state senators with reference to national issues instead of state issues as should be the case, and it affords special opportunities for the purchase of senatorships, opportunities which unfortunately have been too much improved in recent years. The proposed reform is a most excellent one, and is widely desired by the people, but their will is blocked by one little body of senatorial delegates. We call our elected delegates “representatives” and “agents”—curious agents that can refuse to obey the principals’ instructions, make regulations, decrees and ordinances to govern him against his will, refuse to make rules he wants, and give away his lands, franchises and privileges by the hundred million dollars worth to railroad companies, lumber trusts, steel and sugar trusts, etc.—such so called “agents” are masters not agents at all—there can be no real relation of principal and agent except where the principal possesses the powers of veto, instruction, control and discharge, which are inherent in and essential to that relation wherever it exists. Our delegates are frequently misrepresentatives instead of representatives. No system that does not provide means for preventing misrepresentation is justly entitled to be called a representative system. Direct legislation is essential to perfect the representative system, and eliminate the misrepresentations that so frequently occur under our present unguarded system of law-making by final vote of delegates secure from veto till their term expires.

### III. OUR ELECTIVE ARISTOCRACY.

We have gone a long way towards self-government since the days of absolute despotism, but we have not fully attained

self-government yet. The people choose delegates to govern them. But choosing a governor is not governing. A child may choose its guardian. Napoleon was chosen emperor, elected by the people to be their absolute master. We do not elect anyone to be emperor, but we elect periodically a set of men to govern us for a term of years: men who can make laws the people do not want, and refuse to make laws the people do want, men whose will overrides the people's will till their term of office expires, an elective aristocracy, holding for 1, 2, 4, or 6 years. The "people's sovereignty" many times is nothing more than the privilege of choosing now and then a new set of masters.

To change this sham democracy into a real democracy; to transform this government by elective aristocracy into a government by the people; to make the people's sovereignty actual, continuous and effective, instead of imaginary, spasmodic and ineffective, we must establish direct legislation in city and state and national affairs.

#### IV. PRACTICABILITY OF DIRECT LEGISLATION.

We have direct legislation now in the government of local affairs under the town-meeting system, and we use the referendum in the making and amending of our state constitutions. The extension of this essential method of self-government to city and state affairs is naturally next in order, and the movement in this direction has already begun in earnest. In one whole state and in a considerable number of cities in other states, the system of law-making by *final* vote of delegates has been replaced by a system in which the action of delegates is subject to veto and instruction by the people. State laws and city ordinances may be submitted to the people now in nearly or quite all of our states at the option of the legislators. All that is necessary is to *transfer the* OPTION of ordering a submission from the legislators to the people, and make the people's decision final. Or ENLARGE the option so that *either* the legislators *or* the people may order any question to the polls for final decision by the voters.

Either plan puts the *veto power* and the *adopting power* in the hands of the people. As we noted in the Philadelphia case, so long as the option rests with the legislators they are willing to submit questions in respect to which they are acting honestly, but refuse to submit questions in respect to which they are acting dishonestly,—the very questions most in need of submission. Leaving the option of submission on most questions entirely with the legislators, as at present, serves to protect and perpetuate fraud and corruption by keeping from the people the very measures on which it is most important they should pass. Let the people themselves determine what measures shall be voted upon at the polls before going into effect, and the evil power of the lobby, corrupt politicians and self-seeking corporations will receive a death blow.

In national affairs the entire circle of direct legislation, including the initiative, will not be likely to come into full play till its extension to city and state affairs is much more complete than at present; but a vital use of the referendum is practicable now in federal matters with promise of most important benefits. In fact the referendum principle is already applied in national elections in a clumsy, imperfect way, for every such election involves the submission to the people of a number of important issues. They are submitted in heaps and masses called platforms, and no certain indication of public opinion is obtained in regard to any of the questions at issue except where the campaign manifestly turns on a single issue free of disturbance from any other question, but the right and expediency of a direct decision by the people are already recognized. A vote for Bryan or McKinley is understood to be a vote for measures declared for in the platform on which the candidate stands. The people are asked to say whether they prefer the Republican policy of conquest in the Philippines and the gold standard, or the Democratic policy of treating the Philippines in the same way as Cuba, and remonetizing silver. The mixture of issues, however, is a great misfortune and frequently robs the voting of all real value, as a test of the people's wish. Sup-

pose there are 5 million voters who favor immediate free coinage of silver at 16 to 1, and 10 millions against it, also 6 million voters who favor conquest in the Philippines and 9 millions who disbelieve in it, and on this issue alone would vote against the "imperial" policy of forcing our sovereignty upon an unconsenting people, but 4 of the 9 millions may oppose free silver, and part of them may feel so strongly on that subject that they will vote with the Republicans against their convictions on the Philippine question rather than risk free silver at 16 to 1, so that the vote may stand 7 millions for self-government and silver, and 8 millions for conquest and gold,—not a correct representation of public opinion on either question, which by hypothesis is 9 to 6 against conquest, and 10 to 5 against immediate free coinage of silver at 16 to 1.

In this case the country would go against the Democrats, altho overwhelmingly with them on the issue they declare to be the chief one, and it would go against them because they linked the main averment with another that many of their sympathizers could not accept. On the other hand this mingling of issues might carry the country against the Republicans and in favor of free silver, altho the majority of the voters opposed free silver, for a large number who do not wish silver might nevertheless believe so strongly in condemning the policy which has been adopted in the Philippines that they would vote with the Democrats in spite of the silver plank. It seems bad policy to mix such vigorous and discordant issues. It probably would have been wise for the Kansas City Convention to have declared that altho its convictions on silver were unchanged, yet the new and vital issues growing out of the war make it necessary to postpone the further discussion of free silver even as a secondary or tertiary issue, in order that the question of imperialism might have the unobstructed right of way to which its importance entitles it; in other words, with our present methods we can safely advance but one big question every 4 years, and it will take a century to settle the questions that ought to be settled now.

When we remember that adherence to the popular election of U. S. Senators, or to direct legislation, or belief that Democratic leaders more nearly represent the interests of the common people, and are more likely to put effective limits to the evils of trusts, or respect for the past history of the Republican party, or liking for one or other of the candidates, or private interest, may each and all impel voters to endorse a platform containing one or more planks with which they may not agree, we see still more clearly that a presidential vote affords a very imperfect register of public opinion even on the leading issues.

The result would be much improved if the people voted directly for the presidential candidates, and each voter expressed himself in detail upon the questions at issue.

Instead of voting on a complex platform, as a unit, it would be easy to print the main questions on the ballots, and vote yes or no on each issue, thus:

#### MARK YOUR CHOICE.

For President, Bryan, McKinley, Woolley, Barker, Debs, etc.

x

For Vice-President, Stevenson, Roosevelt, Donnelly, etc.

x

- |  |      |     |
|--|------|-----|
| 1. Shall the Philippines be treated the same as Cuba?                      | Yes. | No. |
|  | x    |     |
| 2. Shall trusts and combines be effectively controlled in public interest? | Yes. | No. |
|  | x    |     |
| 3. Shall private monopoly be abolished as fast as practicable?             | Yes. | No. |
|  | x    |     |
| 4. Shall U. S. Senators be elected directly by the people?                 | Yes. | No. |
|  | x    |     |
| 5. Shall direct legislation be adopted?                                    | Yes. | No. |
|  | x    |     |
| 6. Do you desire the immediate free coinage of silver at 16 to 1?          | Yes. | No. |
|  |      | x   |
| 7. Shall the gold standard be maintained?                                  | Yes. | No. |
|  |      | x   |



8. Shall all money be issued by the government and the volume be regulated so as to keep the average price line practically level and the dollar substantially constant in value (i. e., its general purchasing power or average command over the world of purchasable commodities and services?) Yes. No.  
 x

9. Shall a Federal income-tax be established? Yes. No.  
 x

10. Shall this country enter a vigorous protest against the conquest and subjection of the Transvaal and Orange Free State, and demand the settlement of such disputes by an international court of arbitration? Yes. No.  
 x

I have marked the ballot to show how a person who did not agree wholly with either party might thru the referendum express his real convictions fully and accurately.

The voters in this way could express their thought on each individual issue with entire precision, and the vote upon candidates would turn much more upon considerations of individual character, executive ability, and general friendliness to the interests of the people. The party that will accomplish such a change in our methods of voting will entitle itself to the gratitude of all future generations as a party of true patriotism, opening the way to a truer and more substantial government of the people, by the people and for the people.

#### V. CHARACTER OF THOSE WHO FAVOR AND THOSE WHO OPPOSE DIRECT LEGISLATION.

Politicians who aim at the use of government powers for personal ends will not favor the referendum. Monopolists, boodle legislators, aristocratic office holders, plutocrats, etc., do not want it. But it draws to its advocacy honest men of democratic or anti-aristocratic feeling, who really wish to see good and efficient government in the interests of the whole people.

One of the most encouraging signs therefore of the growth of civic thought and political conscience is the direct legislation plank in the Kansas City platform. The platform is admitted even by violent opponents to be a clear and a vigorous statement of the meaning of its makers, remarkably free from "weazel-words," and "stained glass planks," a fact which gives a double force to the simple but momentous words, "We favor direct legislation wherever practicable."

It is known that Bryan favors the referendum principle, and made an effort to obtain a recognition of it in the platform of 1896. This year convention and candidate were in agreement on this point, a point of the most vital importance whether we consider the value of the measure itself, or the indications its advocacy affords respecting the character of the party leaders who framed and adopted the Kansas City platform.

Advocacy of direct legislation by a body of American politicians is an act of the same nature as the advocacy of constitutional government by an emperor, or a body of aristocrats in an old time despotism. It is an expression of confidence in the people, and of willingness to place in their hands the power hitherto held by their rulers. No one who distrusts the people, or disbelieves in popular government, or wishes to pervert the powers of government to private ends will desire the adoption of direct legislation. Only the man who believes in the rule of the people in fact as well as in name, and neither has nor expects to have any private jobs that may be diffident of public inspection,—only such a man can desire direct legislation.

The question of direct legislation is not a partisan one. It is favored by many thoughtful men in every party. Nevertheless it is natural that the party most fully in sympathy with the common people, and least under the domination of political and industrial aristocrats, should be the first to advocate direct legislation. And it is matter for profound gratification that two great parties and their leaders have put themselves on record as favoring the referendum principle.

It is specially fitting that the party of Jefferson should take the lead in this movement to perfect the machinery of Democratic government.

We may fittingly close with a few pregnant lines from the great president and founder of American democracy: "Governments," said Jefferson, "are republican only in proportion as they embody the will of the people and execute it. \* \* \* Government is more or less republican in proportion as it has in its composition more or less of this ingredient of the citizen."

The little clause in the National Democratic Platform favoring Direct Legislation has an importance altogether out of proportion to its length, for it touches the very heart of free government. It is for us in less degree what the question of liberty is to the Filipinos,—it is cut from the same piece,—it is the old, old question; Shall we be permitted to govern ourselves?

## CHAPTER II.

### TWENTY REASONS FOR THE REFERENDUM.

A full statement of the case for direct legislation requires a bulky volume, but under pressure in a good condensing chamber the substance of the principal arguments may be squeezed into very small space, and when one has studied the matter with care even the clauses italicized in the following analysis will call to mind the whole philosophy of the subject.

1. Direct legislation is *essential to self government* in complex communities—a necessary element in true democracy. It and it only *can destroy the private monopoly of legislative power and establish public ownership of the government*. The fundamental questions are: “Shall the people rule or be ruled? Shall they own the government, or be owned by it? Shall they control legislation, or merely select persons to control it? Shall the laws passed and put in force be what the people want, or what the politicians and monopolists want?” The referendum answers these questions in favor of the people, and it is the only thing that can answer them that way, except a miraculous conversion of politicians to wisdom and angelhood.

2. It is simply a *common-sense application of the established principles of agency*, affording the principal his proper rights of veto, instruction, control, or discharge. Direct legislation means control of your servants instead of letting your servants control you.

3. It will *perfect the representative system* by eliminating serious misrepresentation. The *unguarded system* of law making by *final* vote of delegates results in frequent misrepresentation. Laws are passed that the people don't want and laws they do want are not passed. The *guarded system*

of law making, by vote of delegates *subject* to such action as the people may see fit to take directly, is the only system entitled to be called representative because it is the only system that can prove and overcome misrepresentation.

4. It is *immediately and easily practicable* in city and state affairs and to some extent in national affairs. We have direct legislation now in town meeting government, and the making and amending of constitutions. In city and state affairs legislators *may* submit questions to the people if they see fit to do so. All that is necessary is to transfer the option of ordering a submission from the legislators to the people and to make the people's decision final. In national elections, instead of voting on a candidate and a complex platform as a unit, it would be easy to put the main questions on the ballots and to vote yes or no on each issue. (See above, page 18.)

5. *It makes for political purity*, stopping corrupt legislation, and destroying the *concentration of temptation* which exists where a few legislators can take final action on franchises, etc.—\$5,000 may buy five councilmen to vote against the people's interests, but cannot buy 5,000 citizens to vote against their own interests. The power of bribery will be infinitely diluted. It will no longer pay to bribe legislators, for their action will not be final,—they cannot deliver the goods, and bribery of the people at a cost within the range of the values to be gained by it will be impossible. The lobby will die; rings and bosses will lose their power; blackmailing bills, and franchise-steals will go out of fashion; the age of private legislation will pass away. Direct legislation will take politics out of the slums and civilize them.

6. *Better men will be attracted to political life.* The purer politics become the more attractive they will become to good men, and the less attractive to bad men.

7. It will *simplify elections*, separating the judgment on men from the judgment on issues, and disentangling issues so that each may be judged on its own individual merits. Our conglomerate politics, with its mixture of issues in com-

plex platforms, each mixture to be taken only with a specified candidate or set of candidates, makes voting very hard. One may wish to vote against "imperialism," and also against "free silver," or for the rough rider, but against the Philippine policy and the gold standard,—with direct legislation he could do this, but as it is the voter must swallow some gall in order to get some honey.

8. It will *simplify the law*, stopping the enormous output of useless, or worse than useless laws and ordinances, and limiting legislation to the few brief and simple enactments that are *really needed*. The body politic will no longer be disgraced by a fecundity natural only to organisms of a low order.

9. It will *lessen the power of partisanship*. Experience proves that voters at a referendum deal with measures on their merits, and not on party lines.

10. It will *elevate the press*,—voting will turn more on reason, and mud will be less in demand in the political market.

11. It will *educate the people*, intellectually and morally—more responsibility, more discussion of measures and public affairs, wherefore more understanding, sympathy and civic patriotism, more mind, morals and manhood.

12. It will *stop class legislation and give labor her rights*. Lawyers, traders, and corporation men form 60 to 90 per cent. of many congresses, legislatures, and councils. Farmers and artisans are not fairly represented in legislative bodies, but at the polls they will have their due preponderance, and can pass such laws as they please.

13. *It is the open door of progress*. Reforms will come as fast as the people desire them, without organizing or conquering a political party to carry out each advance, or waiting till the millionaires and political bosses are ready for the curtain to go up.

14. *It is, however, wisely conservative as well as progressive*. There is no log-rolling or insidious lobby to carry a rash or dangerous law. The case for reform must be fully proved before the people will vote it. Experience with the

referendum here and in Switzerland demonstrates this. (See below, pp. 52, 125). The natural inertia of caution, stupidity or laziness leads most men to refuse a change unless they have strong reason for it. Yet, in spite of this conservatism which makes it difficult to pass bad measures at the poll, progressive measures with clear reasons to sustain them pass more easily at the polls than in the legislature, because the feeling and interest of the people is with true progress, and the resistive power of private interests opposed to progress is greatly weakened by the vast increase of the area in which it must operate.

15. There is an *automatic disfranchisement of the unfit*—those of least intelligence and public spirit voluntarily refraining as a rule from voting upon the measures submitted. (See below, pp. 52, 99.)

16. It follows from fundamental psychologic laws that with a people fit for free institutions the *judgment of the majority is apt to be superior to the judgment of the few*. (1) The interest of the majority coincides with the public interest. Direct legislation identifies power and interest, and makes the interest-bias work for good instead of evil. (2) Truth is a unit, error is multiple. There are many goals to which false logic may lead, only one to which true logic leads. When the people are in error they are usually divided, each urging his favorite illogicality. In large communities, as a rule, it is only on the basis of truth that the people can get together in controlling numbers, especially where interests are separately considered.

17. *Direct Legislation tends to stability*, not only (1) by the rejection of dangerous legislation, but (2) by offering those who deem themselves oppressed a peaceable and effective remedy by trial in the open court of public opinion—acting as a *safety-valve for discontent*, and (3) by helping to eliminate war—there will be few wars when the common people vote them.

18. It *favors wealth diffusion* by depriving the wealthy of their enormous overweight in government, and giving the

preponderance of legislative power to the common people, whose interests are opposed to industrial injustice, and the vast aggregation of private capital. The income-tax will have a chance, and the nationalization of railways and telegraphs. All oppressive monopolies will become public property, or have their horns sawed off.

19. *Experience here and in Switzerland has proved the measureless value of direct legislation and the utter futility of all objections raised against it.* Our town-meetings and votings on constitutional amendments have shown that men vote on measures with much discrimination, independence of party, wise conservatism, and solid progressiveness. Ambiguous measures, and those involving jobs or tricks are defeated, and the citizens least fit to vote, thru the natural effects of lower intelligence and lack of interest, usually refrain from voting on a referendum. Our people readily use the referendum, and the portions of our legislative system in which it has full play are universally acknowledged to be the purest and best. (See below, p. 51 et seq.)

Switzerland was formerly cursed with the unguarded representative system of law-making by final vote of delegates, class-rule, monopoly, corruption, etc. Direct legislation was adopted, and it has dethroned the politicians and monopolists, abolished bribery, class-law, and machine politics, rid the body politic of its vermin, destroyed the power of legislators to legislate for personal ends, given labor its true weight in the government, elevated the tone of the press, and the methods of political discussion, helped to educate the mind, heart, and conscience of the people, developed the manhood and improved the citizenship of the nation, given great impetus to wise reform, reduced taxation, and changed its incidence from poverty to wealth, established an income tax and other progressive taxes instead of indirect taxes, reduced the charges of monopoly, and transferred the telegraph, telephone, railroads, express, etc., to the public ownership, filled the civil service with efficient officers, given good legislators a practical life-tenure thru repeated re-election, (the people



being able now to reject a law and retain the lawmaker), facilitated the adoption of proportional representation, lessened partisan feeling, proved a drag on hasty legislation, fatal to extravagance, and favorable to economy thru the stopping of jobs and franchise-steals, the lessened cost of legislative sessions, and of printing the simplified and expurgated laws, and the saving of innumerable impotent petitions, powerless mass-meetings, lobby expenses, abortive investigations, etc. The great success of the referendum in Switzerland is fully attested by numerous witnesses of the highest character. It is deeply rooted now in the hearts of the whole people, even those who opposed its adoption having been converted to its favor by abundant experience of its benefits (see below, pp. 118-128, and authorities there cited.)

20. *The movement of thought and events in America is in the direction of direct legislation as is also the general trend of political history thruout the civilized world.* All over the world, the current sets from despotism to democracy. Thrones have been crumbling for a hundred years. Constitutions have been written and are growing more and more liberal, giving the people larger and larger powers. The whole movement is toward the full and effective sovereignty of the people in the expression of which direct legislation performs so indispensable a part.

Our century is filled from end to end with the growth of the people's power. The progress of civilization means the uplift of the common people. Once only the sovereign could make a law; all others were his subjects; now the people make some laws, influence to some extent the making of the rest, and have in *theory* the *right* to exercise the whole power of government; at last the theory will be realized and the people will be sovereign in fact as well as in name,—no laws will be made against their sovereign wish, and all laws their sovereign majesty desire will be enacted,—a state of things impossible except thru direct legislation.

One of our states has passed a municipal direct legislation law; another has adopted a full direct legislation amendment

to the constitution, and in two others such amendments have passed the legislature and will be submitted to the people. In five states now, cities may frame their own charters, and San Francisco has put direct legislation in her new home-made charter. A considerable number of states have provided for the referendum, and some for the initiative, on franchises and other important matters. The use of the referendum is fast expanding, and opinion favorable to its further extension is rapidly growing. Wm. J. Bryan, Thos. Jefferson and Abraham Lincoln have advocated it. The American Federation of Labor, the Knights of Labor, the Farmers' Alliance, Christian Endeavor Societies and Epworth Leagues, the Social Reform Union, and political parties representing many millions of voters, have pledged themselves to its support. The whole drift of public sentiment is in its favor. It is in the line of least resistance in reform to-day.

PROF. BRYCE says:

"The Americans tend more and more to remove legislation from the legislatures, and intrust it to the people."

THOS. JEFFERSON said:

"Governments are republican only in proportion as they embody the will of the people, and execute it," and "Government is more or less republican in proportion as it has in its composition more or less of this ingredient of the direct action of the citizen."

WM. J. BRYAN says:

"Democracy is not merely a party name. Democracy has a meaning. Democracy means a government in which the people rule, and that is all we ask for. We are willing to submit any question that concerns the people of this country to the people themselves."

"The principle of the initiative and referendum is democratic. It will not be opposed by any Democrat who endorses the declaration of Jefferson, that the people are capable of self-government, nor will it be opposed by any Republican who holds to Lincoln's idea that this should be a government of the people, by the people, and for the people."

In his Labor Day address Mr. Bryan said:

"The laboring man favors direct legislation wherever practicable for the same reason that he favors the election of senators by popular vote. Direct legislation brings the government nearer to the voter. There is more virtue in the people than ever finds expression through their representative.

"To hold that a representative can act for the people better than they can act for themselves is to assert that he is as much interested in the people as they are in themselves and that his wisdom is greater than the combined wisdom of the majority of the people. Neither proposition is sound. Most if not all of the evils complained of in government are traceable to the fact that the representative of the people has personal interests at variance with the interests of his constituency. Corruption in municipal, State and Federal governments is due to the misrepresentation of the people by public servants, who use their positions for private advantage.

"The people should have an opportunity to vote on public questions when those questions can be submitted without too great inconvenience and expense."

SAMUEL GOMPERS, president of the American Federation of Labor, writes:

"All lovers of the human family, all who earnestly strive for political reform, economic justice, and social enfranchisement, must range themselves on the side of organized labor in this demand for Direct Legislation."

HON. JOHN WANAMAKER says:

"The movement to secure for the people a more direct and immediate control over legislation shall have my support. I trust such a movement will receive the thoughtful attention of all who would improve our political and industrial conditions."

In fact only short-sighted plutocrats and politicians, and persons unwilling to trust the people oppose the referendum. All who really believe in government by the people favor direct legislation as soon as they understand it. It simply

means the enfranchisement of all voters on all questions at all times, in place of the disfranchisement of nearly all voters at nearly all times on all questions on which they differ from councilmen and legislators. It seems that the mighty power of the ballot may be used not merely one day in the year, but any day the public good requires—that the great engine of popular sovereignty may be made to move whenever the *people* see fit to turn on the steam. It is the key to the fulfillment of Lincoln's grand promise and prophecy,—“A government of the people, by the people, and for the people.”

### CHAPTER III.

#### DIRECT LEGISLATION.

In early days the legislative function was exercised by the whole body of enfranchised citizens assembled for the purpose. The laws of the commonwealth were made by the voters directly, in substantially the same way that the laws of a New England town are made to-day. But after a time the body of free-men became too large to meet in this way, and a system of law making by delegates was adopted. Towns and districts elected men to represent them in legislative council, and government by representatives took the place of government by the people except in respect to the *local* affairs of towns that possess the town-meeting system.

The change from legislation by the people to legislation by *final* vote of a body of representatives chosen for a specified term, was a transformation fraught with the most momentous consequences. Under the former system the people had complete control of legislation. No laws were passed that the people did not want, and all laws were passed that the people did want. But under the delegate or representative-final-vote system this is not true. The representatives can and do make and put in force many laws the people do not desire, and they neglect or refuse to make some laws the people do desire. The people cannot command or veto their action during their term of office. The representatives are the real masters of the situation for the time being. Between elections the sovereign power of controlling legislation is not in the hands of the people, but in the hands of a small body of men called representatives. It appears therefore that the change from legislation by the voters in person to legislation by delegates was a change from a real democracy to an elective aristocracy; from a continuous and effective popular sovereignty to an intermittent, spasmodic and largely ineffective

popular sovereignty; from a government of the people, by the people and for the people, to a government of the people, by a few for—— the people? —— yes, sometimes, but too often for the legislators, and the lobbies, bosses, rings, monopolies, and party leaders who control them. It was a change in which self-government was fettered and the soul of liberty was lost.

What then shall be done? Shall we give up the representative principle? Clearly not. Division of labor and expert service are as essential in law making as in any other business. It is not representation, but misrepresentation that is wrong—not the representative system per se, but the unguarded and imperfect form of it in use at present. What we want is not a body of legislators beyond the reach of the people for one, two, four or six years, as the case may be, but a body of legislators subject at all times to the people's direction and control. It is good to have powerful horses to draw your load, but it is well to have bit and rein and whip if they are frisky or likely to shy or balk. It is good to choose strong men to manage municipal and State affairs, but it is well too to provide the means to hold them in check or make them move at the people's will.

The problem is to keep the advantages of the representative system—its compactness, legal wisdom, experience, power of work, etc., and eliminate its evils, haste, complexity, corruption, error, over legislation and under legislation—departure from the people's will by omission or commission.

The solution lies in a representative system guarded by constitutional provisions for popular initiative, adoption, veto, and recall. Elect your councilmen and legislators and let them pass laws exactly as they do now, except that no act but such as may be necessary for the immediate preservation of the public peace, health or safety, shall go into effect until thirty days after its passage in case of a city ordinance, or ninety days in case of a state law. If within the said time a certain percentage of the voters of the city or state (say five or ten per cent.) sign a petition asking that the law or ordinance be submitted to the people at the polls,

let it be so submitted at the next regular election, or at a special election if fifteen or twenty per cent. of the voters so petition. If the majority of those voting on the measure favor it, it becomes a law; if the majority are against it, it is vetoed by the people.

Let it be further provided that if the council or legislature neglect or refuse to take any such action by ordinance, law, contract, franchise, etc., as the people desire, the matter may be brought forward for prompt decision by a petition signed by a reasonable percentage (say five or ten per cent.) of the voters of the city or state. The petition may simply state the general purpose and scope of the desired measure, leaving the council or legislature to frame a bill to be submitted to the voters; or it may embody a bill or ordinance, whereupon the petition, with the bill or ordinance, will go to the council or legislature, which may adopt it, reject it, pass an amendment or substitute, or do nothing—in any case the proposed measure (together with the action of the council or legislature upon it, if any) will go to the polls for final decision at the next election, or earlier, if a sufficient number (say fifteen or twenty per cent.) of the voters so petition.

These methods of law making by the people are called Direct Legislation, which includes two main processes known as the Initiative and the Referendum.\*

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\*The referendum may be obligatory or optional, general or partial, executive, legislative, judicial or petitional. Under the general *obligatory* referendum all laws except emergency measures (acts necessary for the immediate preservation of the public health, peace or safety) *must* be submitted to the people; no petition is needed; the submission is as much a part of the process of law making as the submission to the mayor or governor. The cantons of Berne and Zurich, in Switzerland, have had this system in operation for thirty years with admirable results. Under the *partial obligatory* referendum all laws of a certain class *must* be submitted to the people. For example, constitutional amendments *must* be submitted to the voters in every one of our states except Delaware, and in Missouri, California, Washington, Minnesota and Louisiana freehold-charters must go to the polls. The purchase or erection of water works, gas and electric plants, telephones and street railways, the issue of bonds for roads, schools and other municipal movements of large importance are usually guarded by the obligatory referendum. (See Chapter III. Comments on Table II.)

The *optional* referendum provides for a vote of the people on any measure in reference to which such vote is demanded by petition of a reasonable percentage of the voters, or by some officer or body in whom such discretion is vested.

The *executive* referendum is where the mayor or governor or president has a right to refer a measure to the voters for decision.

The *legislative* referendum is where one house, or a given percentage (say twenty-five per cent.) of one or of both houses may refer a measure to the people for decision, or where a measure upon which the houses disagree must be referred to the voters.

The *judicial* referendum is where a law that has been declared uncon-

The *Initiative* is the proposal of a law by the people.

The *Referendum* is the submission of a law to the people at the polls for approval or rejection.

By these means the people can start or stop legislation at will. By initiative petition they can bring a measure forward for discussion and decision. They can repeal an old law or amend it, or enact a new one, and progress is no longer barred by the interest or inertia of the legislators or councilmen, nor by the weight and wealth of corporate monopoly. Moreover, the people can *prevent bad* legislation as well as *secure good* legislation. If the legislature passes a law the people dislike they can call for a referendum and veto the measure at the polls before it goes into effect, whereas at present the law goes into effect whether the people like it or not, and they have to wait till they can elect a new legislature to repeal the obnoxious act (after the damage is largely done, perhaps), and if the said act is a franchise, very likely it cannot be revoked at all when once allowed to take effect—a franchise grant to a private company being a contract within the protection of the Federal Constitution, a fact which makes it particularly necessary that franchise grants (especially if unqualified by a reservation of the right to revoke at will) should be submitted to the people.

Does not the Direct Legislation Amendment to the Representative System solve the problem? Does not the *guarded* representative system retain the benefits and eliminate the

stitutional must be submitted to the people for the final decision under a fixed rule to that effect, or *may* be so submitted by the court, or by a specified number of the judges.

The *petitional* referendum is where the submission is called for by petition of the voters. A petition signed by the required number of voters is imperative, not a mere request, but a compelling mandate. It is the petition form of the optional referendum, or the *system in which the option lies with the people*, that is usually meant when the word "referendum" is used without explanation.

It will be seen that executive, legislative or judicial referenda may be either obligatory or optional, general or special, and that the petition method can be used to repeal an old law or veto a new one, or confirm a law declared unconstitutional, or call for an election to remove a legislative or executive officer or a judge from office.

The effective vote at the polls may be fixed at a majority of those voting, or of those entitled to vote, or a three-fifths, two-thirds, or three-fourths vote may be required.

The word "referendum" is often used in the sense of *the right of the people to have enactments submitted to them*, and it is also used to designate a statute or constitutional amendment securing this right. The word "initiative" is used in a similar manner. The context will usually show which sense is intended.



evils of the *unguarded* representative system? The city or state will have its body of legal experts, trained advisors, and experienced legislators as at present. They will continue to do most of the law-making as they do now, but their power to do wrong or stop progress, their power to do as they please in spite of the people, will be gone. The city and state will have the *service* of its legislators without being subject to their *mastery*. If the delegates act as the people wish, their action will not be disturbed. If they act against the people's wish, the people will have a prompt and effective veto by which they can stop a departure from their will before any damage is done. If the delegates do not act, the people can put the machinery in motion and bring the matter to decision. When the delegates truly represent the people their action will stand; when they fail to represent the people their decision will be subject to prompt revision. To-day their acts that do not represent the people's will stand as firm during their term of office as the acts that do represent the popular will. Is this right? Is it right that the people's delegates should be able to impose their will upon the people for one, two, four or six years? Is it right that the acts of delegates contrary to the people's will should stand in spite of the people? Is such a delegate system really worthy to be called a "representative system?" Is a system properly termed representative which may misrepresent as much as or more than it represents, and in which there is no adequate means of determining whether its action is representative or not? Is not the right to a referendum, the right of the people to prevent the delegates from misrepresenting them, absolutely necessary to entitle the delegate system to the name "representative?"

#### SELF GOVERNMENT.

There is a confused impression in the minds of many that the choosing of rulers is the substance of freedom and self-government; that a people who elect their law makers are really making the laws. But it is not so. The selection of a governor is not governing, any more than the selection of a

captain is commanding, or the choice of an organist or pianist is playing. The choice of a legislature is not self-government any more than the selection of a jailor or the choice of a jail is freedom.

An apprentice may be allowed to choose the master to whom he is to be bound for years, and a lunatic or minor who is deemed incapable of governing his own affairs may, nevertheless, have the privilege of selecting the guardian who is to govern him. A people may elect their rulers and yet live under an absolute despotism. This was true in old Rome when the King was elected by the whole body of citizens. It is true now of the Western Fulahs in Africa and the Kamtschadales in Asia, who elect their chiefs, but after election must obey the head man's orders. It is true in many of the cities of America, where the people go to the polls year after year in the fond delusion that they have a voice in the administration of public affairs, whereas, in reality, a ring of rascals holds the city in its grasp, and whichever nominee the citizens may vote for, the ring will rule the same as before, enacting its private purposes into law, pouring the public moneys into its purse, filling appointments with its creatures to perpetuate its power, and controlling the city for its plunder, regardless of the interests or the wishes of the people. It is true in the nation and the states as well as in the cities. The rule of a congress or legislature that does the will of a railroad or syndicate of gamblers in opposition to public opinion and the good of the commonwealth is a despotism as truly as ever the rule of a Tarquin or a Cæsar was. Napoleon himself, the arch-despot of modern times, was elected to his imperial power.

The *duration* of a government or lease of power has nothing to do with its character as free or despotic. A control that lasts but a single year may be as far from freedom as one that endures for a life time; and a people electing their rulers each year to govern according to their own sweet will *may* be no better off than a nation which elects a sovereign to wear the crown for life. The essence of despotism is the control of others for the benefit of the controller, regardless

of the welfare of the controlled. The Tweed administration was a despotism altho elected to power. So was the gas legislation of the Philadelphia councils leasing the city works to a powerful and corrupt ring, in spite of the well-known and vigorously-manifested opposition of the great mass of the people. So was the action of the Black Congress that gave away the people's franchises and money and lands to the schemers who projected the Pacific roads. Men of America, do you govern the country? Is it your will that is done in Senate chamber and council hall, or is it the will of the oil-trust, sugar-trust, whiskey-trust, the railways and the bankers? *He is the sovereign whose will is in control.* You are not sovereign, for many things you wish to have done remain undone, and many things are done that you do not wish to have done. Politicians call you sovereigns in their campaign speeches. But it is not true. You have the privilege of choosing which of two or three sets of sovereigns you will have to rule over you, but you are not sovereigns yourselves. The men you elect are your masters during their term of office. You come to them, not as sovereigns to their servants, but as subjects, with humble petitions, which you are not surprised to see them reject or ignore. They give away your property and you are helpless; they pass laws without your approval and against your interest and you cannot prevent their taking effect; they refuse to take action on your most pressing needs, and you are powerless until the expiration of their deeds of sovereignty gives you an opportunity to choose a new lot of masters to rule you for another term. This is not a government by the people, but a government by an aristocracy of office holders elected by the people. You call your rulers "representatives;" and to some extent they are such. Honesty and coincidence of interest do lead them to carry out your will to some extent, but they are free to legislate for their own private interests or the interests of those who furnish inducements for action in their behalf, and the people cannot prevent it. Representatives have their uses. You need the aid of specialists in legislation, but you do not need to part with your rightful control of your own affairs when

you seek their aid and council any more than you need to part with it in dealing with a tailor, a doctor, or an architect.

It is well to employ an architect when you are going to build, but you never would think of giving him power to draw up his plans and put them into execution without submitting them to you for approval, much less would you give him a right to refuse to alter his plans in accordance with your request, or to decide how much of your money should be spent without recourse to you for assent, or to expend your funds for a structure which you strongly disapproved and against which you loudly protested. You would avail yourself of the architect's skill in the drawing of plans, but you would feel free to tell him what sort of a house you desired, and would expect him to act upon your directions and suggestions, and to submit his plans to you for approval or rejection before beginning to build on your land and on your credit or with your cash. In this case you would continue to control your affairs while availing yourself of the architect's wisdom and skill. In the first case, the control of your affairs would be in the architect, not in you.

It is the same with legislation. Doubtless it is well to seek the aid and council of men well versed in law and skilled in the phrasing of statutes, but it is not necessary to give these men the power to ignore our petitions, nor the right to put the laws they plan in execution without allowing us time and opportunity to express our disapproval and rejection if we wish to do so. There are cases of extreme urgency, in which the architect or the legislative agent must be permitted to act without waiting to consult his principal. Fire, flood, or other unforeseen event may make it imperative that the builder should act on his own judgment, without an instant's delay. Likewise an unforeseen event endangering the public safety may make it needful for our legislators to act at once. But as a rule there is time for consultation, and it ought to be required. If you do not require it, if you allow your "representatives" to put their plans into execution without an opportunity on your part to reject them or modify them, you practically place the control of your affairs in the said repre-

representatives for the term of their election, and self-government on your part ceases during the said term.

We do not want a government by the people without representatives, nor a government by representatives without the people; but a government by the people with the aid and advice of representatives, or what is essentially the same thing, a government by representatives acting as the people's agents, subject at all times to the orders and instructions of the people, and to total revocation of authority at their will. The first is impossible in a complex society; the second is an abandonment of the principle of self-government; the third combines the good qualities of the representative system with a real sovereignty in the people—it secures the economies and values of representation without sacrificing justice, liberty and self-government. It uses the legislator, like the architect, to draw up the best plans his knowledge permits; it gives him a right, like the architect's in cases of extreme emergency, to act upon his own unaided judgment; but requires him at all other times to submit his ideas to his principal before putting them in practice, and holds him at all times subject to the orders and suggestions of his principal. Such is clearly the ideal management of political affairs as well as of business affairs. Indeed politics is itself nothing but business; the *people's* business, it ought to be, and under their control. We have already seen how this intimate and continuous control of their representatives by the people can be secured in place of the present subjection of the people to their representatives during successive periods. It is a simple matter of extending the use of the referendum.

#### THE REFERENDUM IN USE IN AMERICA.

*The Referendum is already a Fundamental Fact in American Government and a Settled Principle in our Legislative System.*

The suggested improvement of our representative system, to make it harmonize with the law of self-government does not require the adoption of any new principle or method. Both the initiative and the referendum have been in constant use in America ever since the Mayflower crossed the sea. All

that is needed is an *extension* of established principles and methods to cases quite as much within their reason, purpose and power as those to which they are now applied.

In many of our towns we have the ideal of Democracy in respect to local affairs. They are controlled by the people directly. Any ten men, by petition to the selectmen, may secure the insertion of an item in the warrant for a town meeting, and so bring the matter before the town. Any one may make a motion or enter the discussion, and all may vote. The town meeting plan is the Initiative and Referendum applied to town business.

Direct Legislation is also used by all our states, except Delaware, in making and amending their constitutions, from which it would seem that our citizens are already convinced that it is the best possible plan of legislation, since it is the one they adopt in respect to their highest and most important law.

At first, as we have said, there was no other sort of government. For nearly twenty years after the founding of Plymouth Colony, in what is now Massachusetts, the law making was done in primary assembly of the freemen every quarter, and when the colony grew so large that it was difficult for the people to meet in this way four times a year, it was provided that every town should elect two delegates to join with the Bench in enacting all such ordinances as should be judged good and wholesome, and that the whole body of citizens should meet once a year to have a general oversight of the doings of the delegates, repeal any of their acts that were deemed prejudicial to the whole, and pass such new measures as might be needful in the judgment of the people.<sup>2</sup> That was the referendum almost as it is advocated to-day. It lasted from 1638 till 1658, and in a modified form till 1686, but it was lost to state affairs when the colony was united with others and the population became too large to meet even once a year. No one in Massachusetts seems to have thought of the method of polling the whole citizenship on specific

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<sup>2</sup> See Direct Legislation Record, 1898, p. 33, and "Representation and Suffrage in Massachusetts, 1620-1691," by Prof. George H. Haynes.

measures<sup>3</sup> for the reason may be that in those primitive, unsophisticated times, the delegates really acted very nearly as the people wished them to. The population was comparatively homogeneous in interest, the disturbing influence of powerful class and monopoly interests was unknown, and the modern politician had not been born.

Still the people did preserve Direct Legislation in town affairs and in the making of the fundamental law, fondly dreaming that this would be sufficient to prevent any possible deflection of wiley representatives. It has not done that, but it has proved itself the most perfect of all legislation. No law-making in the world has been so smooth, so wise, so effective, so free from taint or suspicion of class interest or corruption as the making of American constitutions and the legislation of New England town-meetings. Compare the honest, public-spirited, effective, progressive and economical government of a Maine or Massachusetts town with the dishonest, selfish, narrow, ineffective, non-progressive and extravagant governments of our ring-ruled cities, and you will get some idea of the natural tendencies of the two systems—leaving the law-making power with the people, or giving it to a limited number of men to play with as they please for a specified time. No other part of the country can be compared to New England in the completeness of its local improvements, yet nowhere is the debt so small as in New England towns; nowhere else are the voters so well informed; nowhere else is such ample provision made for the education of children.<sup>1</sup>

Thomas Jefferson referred to the town-meeting as “the wisest invention ever devised by the wit of man for the per-

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<sup>3</sup> In other places the thot occurred and was acted upon. In the seventeenth century the fundamental law of Rhode Island required that all laws passed by the general assembly should be referred to the people, and this was done until the law was superseded by a royal charter. In reference to the early constitution of Pennsylvania Noah Webster says, “I cannot help remarking on the singular jealousy of the constitution of Pennsylvania, which requires that a bill shall be published for the consideration of the people before it is enacted into a law, except in extraordinary cases,” and remarks that this reduces the legislature to an advisory body. In Virginia Jefferson drafted a provision that all laws, after passing the legislature, should be voted on by the people, and advocated it as a part of the state constitution, but it was defeated for fear it might touch slavery. This was the referendum in its highest form—the obligatory.

<sup>1</sup> See “Town and Village Government,” by H. L. Nelson, *Harper's Monthly*, Vol. 83, p. 111, June, 1891, contrasting the effects of the New England town-meetings with the effects of the village government in states not possessing the town-meeting.

fect exercise of self-government and for its preservation." Prof. John Fiske says that "Government by town-meeting is the form of government most effectively under watch and control. Everything is done in the full daylight of publicity. The town-meeting is the best political training school in existence. It is the most perfect exhibition of what President Lincoln called 'government of the people, by the people and for the people!'" Prof. Bryce says, "The town-meeting has been the most perfect school of self-government in any modern country. \* \* \* It has been not only the source, but the school of democracy."

The value the people of New England place upon their town-meeting system is shown by the tenacity with which they cling to it, refusing to have their towns incorporated even after they have grown to unwieldy size, because in so doing they lose the town-meeting and pass from self-government into the hands of politicians. For this reason Pawtucket, Rhode Island, did not become a city until its population came close to 20,000. Brockton, Massachusetts, held off until it was listed at 15,000. North Adams, a town of more than 16,000 inhabitants and 4,000 voters has repeatedly refused to become a city. Waltham, Chicopee, Pittsfield and many other towns bear witness to the same strong feeling. Massachusetts has only thirty-two incorporated cities, instead of sixty or more, as she would have under the regime prevailing in states where the town-meeting is not in vogue.

Brookline, Massachusetts, is a town of 15,000 people. It lies within the metropolitan district of the city of Boston, but is not a part of Boston, having retained its government in spite of its situation within the practical limits of a giant city. The contrast between the city of Boston and that of Brookline is a startling one. Boston, tho better governed than some other cities, has its corruption, its bosses, rings, spoils system, arrogant monopolies, high taxes and extravagant expenditures—extravagant for the results achieved—four or five times as much as the English city of Birmingham spends to obtain as good or better results.<sup>1</sup> In Brookline economy is

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<sup>1</sup> Forum, Nov., '92, p. 267; see also No. Amer. Rev., v. 152, p. 538.



a fine art, and tho large amounts are spent in public improvements and on the magnificent school system, the taxes are considerably lower than in Boston. There is no corruption, boss rule, ring rule, or spoils system in Brookline, altho the expenditures amount to  $1\frac{3}{4}$  millions a year, or more than the expenditures of the whole state of New Hampshire. The town is governed by the citizens in primary assembly, the town meetings averaging eight per year.<sup>4</sup> The meetings begin at 7.00 P. M., and are usually over between 10 and 11 P. M. Ample notice is given of every matter to be considered at the meeting, so that proposed ordinances, etc., may be fully discussed, and all who feel interested may attend, make motions, argue and vote. Sometimes a large number of voters attend the meetings, but usually two or three hundred of the best-informed and most public-spirited citizens do the business, so that while the door is open for the whole body of citizens to take part in the decision of any matter that comes before the town, yet the actual decision in each case is generally left by tacit assent to a small body of public-spirited men who have taken pains to inform themselves upon the questions in issue—two hundred men in one case, perhaps a thousand in another, a legislative body whose units vary considerably according to the topics under discussion, coming together by a sort of natural selection, compounded of interest, intelligence and public spirit, acting with the power of a limited assembly, but subject at all times to prompt revision or veto by the whole body of citizenship—a fact which operates to keep attention and decision close to the public interest. This is exactly the sort of government we are proposing for our cities and states. The extension of the initiative and referendum to practically the whole range of municipal and state business will place the ultimate power at all times in the people, and that will make it safe to leave public business to limited bodies of experts, who will be held true to the public interest by the power of veto and revision residing in the public. When we contemplate the admirable effects of this

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<sup>4</sup>See the yearly reports of the town and a condensed account in the Direct Legislation Record, 1896, pp. 2-4, and "Brookline, A Model Town Under the Referendum," by B. O. Flower, Arena, Vol. 19, p. 505, April, 1898.

system in Brookline, effects which lead the people of Brookline to resist most earnestly all attempts to make the town a part of Boston, because their experience has shown that Direct Legislation gives results far superior to those obtained under the unguarded delegate system in the adjoining city of Boston, even tho the said adjoining city is so much better than other cities that it prides itself, not without reason, on being the Athens of America and the Hub of the Universe. When we contemplate these facts we feel convinced that common sense and civic patriotism demand the extension of the principle of Direct Legislation to Boston and all other cities of our land.

The worth of the town-meeting method is recognized not only in Massachusetts, Maine, New Hampshire, Vermont, Rhode Island and Connecticut, but in New York, Michigan, Illinois and many other states outside of New England. In Illinois it came into direct and vigorous conflict with the representative system of local government. In 1818, when Illinois became a state, its population was chiefly in the southern counties, and composed for the most part of settlers from Virginia and Kentucky, Virginia's daughter state. These settlers established a system of local government by elective representatives without any local deliberative assemblies of the people. Settlers from New England and New York, coming into the northern part of the state, began to demand the town-meeting system. A struggle ensued, resulting in the adoption of a new constitution (1848) providing for local option in local government; that is, township government by deliberative assembly of the voters would be organized in any county whenever a majority of its voters so determined. The two systems being thus brought into immediate contact in the same state, with the people free to choose between them, the northern system has steadily supplanted the previously established southern system till less than one-fifth of the counties retain the representative system, more than four-fifths of the state having adopted the New England town-meeting system of local government.

A similar local option by county vote has been established

in Missouri (1879) and in Nebraska (1883). In Minnesota (1878) and Dakota (1883) provisions for township option have been enacted, i. e., any township containing 25 or more voters may petition the county commissioners and obtain the New England organization.

The general movement toward Direct Legislation in town affairs is unmistakable, and the public school system is often the entering wedge. The school district as a preparation for the self-governing township is exerting its influence in Kansas, Colorado, Nevada, California, Wyoming, Montana, Idaho, Oregon and Washington. Even in South Carolina, Kentucky, Tennessee and the Virginias a similar tendency is manifest, and it is probable that thruout the southern and western states, as formerly in Michigan, the self-governing school district may bring in its wake the self-governing town, with its deliberative assembly of the voters, electing officers, levying taxes and making town laws by direct vote of the people.<sup>5</sup>

The use of the referendum in the United States is not confined to town affairs and constitution making. Any one who will go thru the laws of the various states marking all provisions for submitting to popular vote franchises, licenses, contracts, bond issues, charters and all sorts of laws and ordinances, will discover a vast number of referendal clauses, and will begin to realize how important a place in our law is already occupied by Direct Legislation in state and city affairs. Some perception of this may be secured by marking the referendal clauses in the laws cited in Chapter III of this book, but the distance between such perception and the whole truth may be appreciated when it is known that in the single state of Iowa a moderate search, by no means exhaustive, has revealed thirty provisions for the popular initiative and twenty provisions for the referendum, most of them obligatory; and such provisions are not more prevalent in Iowa than in many other states. Some of these enactments are given below\*;

\* John Fiske's "Civil Government," pp. 90-94.

\*Some of the Iowa provisions are as follows:

1. "One hundred citizens of any city of over seven thousand inhabitants may cause the question of establishing a superior court to be submitted."
2. "One-fourth of the voters may cause the question of raising taxes for public improvements or payment of debts to be submitted; or the ques-

the points I wish to emphasize here are: *first*, that our laws are permeated by the principle of Direct Legislation; *second*, that in a large body of cases the obligatory method is in use; *third*, that in a considerable number of other cases the option rests with the people; *fourth*, that in another large body of cases the option is expressly given to the executive or legislative authorities; and *fifth*, that in all other cases, according

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tion of the rescission of any of such proposition that has already been adopted."

3. "Two-thirds of the voters of any village may cause the board of supervisors to change the name of such village."

4. "A majority of the voters of a township may cause the trustees to submit the question of building a public hall."

5. "Twenty-five voters of any portion of territory may cause the district court to submit the question as to whether such territory shall be incorporated as a town."

6. "Twenty-five of the voters of such town may cause the question discontinuing the incorporation to be submitted."

7. "A majority of the voters of a portion of territory adjoining a city or town may cause the question as to being annexed to such city or town to be submitted."

8. "Ten per cent. of the voters of a city or town, under special charter, may cause the council to submit the question as to abandoning such charter."

9. "Twenty-five property owners of each ward in a city, or fifty owners of a town, may cause the mayor to submit the question as to municipal ownership of water works, gas works, electric light or power plants, or granting franchises for such."

10. "One-third of the taxpayers of a city or town may cause the question as to aiding in the construction or repair of a highway leading thereto to be submitted."

11. "Twenty-five property owners in each ward in a city, under special charter, may cause the mayor to submit the question as to ownership of water works, gas works, electric light or power plants, or granting franchises for same or for railways, street railways or telephone systems."

12. "One-fourth of the voters of a city, under special charter, may cause the question as to amending such charter to be submitted."

13. "A majority of the resident freehold taxpayers of a township, town or city may cause the question as to aiding railroad company in construction of projected railroad to be submitted."

14. "From fifty to eighty per cent. of the voters of a city or town, according to population, may cause the mulct tax to be substituted for the prohibition law against selling liquor."

15. "One-third of the voters of a county may cause the question as to establishing a high school to be submitted."

16. "Ten voters of any city, town or village of over one hundred residents may cause the question of making it an independent school district to be submitted."

17. "One-third of the voters of a school corporation may cause the question of free text books to be submitted."

18. "The State cannot go into debt more than two hundred and fifty thousand dollars without submitting the question."

19. "All acts creating banks must be submitted."

20. "Amendments to the constitution must be submitted."

21. "No territory can be annexed to a city or town without submission."

22. "The council may submit the question as to annexing territory in cases wherein such territory has asked for annexation."

23. "The council must submit the question as to uniting the city or town with another contiguous one."

24. "No city or town can extend its limits without submission."

25. "The name of a city or town cannot be changed without submission."

26. "No water works, gas works or electric light or power plants shall be authorized, established, erected, leased or sold, or franchise extended or renewed without submission."

27. "Cities and towns cannot appropriate money to found and maintain libraries without submission."

28. "No water works can be purchased or constructed by cities of the first class without submission."

29. "Cities and towns cannot grant, renew or extend franchises for the use of its streets, highways, avenues, alleys or public places for tele-

to the law of most of our states,<sup>1</sup> the referendum may be used at the *discretion of the legislative authorities*—the legislature or council *may submit any question to the voters*, so that really *the only change we ask for is the placing of the OPTION in the hands of the people instead of leaving it with the legislators*. If it rests with the councilmen to decide whether a franchise, lease, contract, or other matter shall be submitted to the voters, they will be ready enuf to submit enactments with which they have tried to act honestly, and in respect to which they really desire to follow the people's will; but when there is a steal on foot and the councils are conscious of dishonest purpose, they will refuse to submit the matter to the voters. The question of building a public subway may go to the people, but the question of a Broadway Surface Franchise or a Philadelphia Gas Lease will not be submitted, even tho the people hold enormous mass meetings demanding it, and the press is a unit in favor of it, and public sentiment is at a white heat over the refusal. To leave the *option* with the legislature is to put the referendum beyond the reach of the people just when they need it most. As tho my architect could submit his plans to me before building if he chose, or go ahead and build with my funds without consulting me, no matter how much I protested, if it suited his purpose to use his discretion that way. When he was acting honestly for my interest he would consult me, for he would have nothing to fear from such consultation; but

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graph, district telegraph, telephone, street railway or other electric wires without submission."

30. "Cities cannot deepen, widen, straighten, wall, fill, cover, alter or change the channel of any water course, or part thereof, flowing thru the limits of such city, or construct artificial channels or covered drains, without submission."

In a large number of States the prohibition of the liquor business is allowed to cities or counties by vote of the people, and the referendum is being used more and more in the obligatory form, through constitutional provisions compelling the legislatures to submit certain questions to the people whether they petition for a referendum or not. In 15 states the location of the capital cannot be changed except by popular vote. In 11 states no debts, unless specifically provided for by the constitution, can be incurred without such a vote. In many states a similar restriction applies to assessments above a fixed rate. In 19 states counties must choose their county seats in this way.

<sup>1</sup>Delaware seems to take a position against any implied authority in the legislature to submit questions to the people. *Rice v. Foster*, 4 How. (Del.) 479. The vast weight of authority, however, is the other way. See *People v. Reynolds*, 5 Gilm. (Ill.) 1; *Ewing v. Hoblitzelle*, 85 Mo. 64; and the citations in the article by C. S. Lobinger, Esq., on "Constitutional Law" in *American and English Cyclopaedia of Law*, p. 1022 of vol. VI (2d ed.), and in Dr. E. P. Oberholtzer's "Referendum in America," published at Penn. University.

if he were trying to put up a job on me, he would exercise his option to act without conferring with me, because such a conference would greatly endanger the success of his job.

A few illustrations may show how frequent is the use of the referendum, and how thoroly the legislators believe in it when they have no private interests likely to be endangered by it.

1. The New Jersey legislatures of 1885 to 1888 are said to have referred 40 questions to the people.

2. In the fall of '93 California sent 9 questions to the people.

3. New York voted a few years ago on the question of prison labor and on selling the public salt works.

4. The city of New York long ago voted at the polls on the water supply, and have recently decided in the same way to build an underground city railway, and the legislature has also referred the question of municipal annexation and consolidation to the citizens of New York and vicinity.

5. Boston citizens have voted a number of times on the use of the common, rapid transit, the subway, the methods of choosing aldermen, a single chamber, etc.

6. Minneapolis recently voted on the question of raising \$200,000 for the schools and \$400,000 to extend the city water works.

7. San Francisco, Los Angeles, St. Louis, Kansas City, Duluth, Tacoma and other cities have held referendal votes on the adoption of freehold charters. (See Chapter III.)

8. It is a common thing to submit to the people of a city questions relating to the purchase or erection of public water works, gas works, electric light plants, etc. In a very large proportion of the four hundred municipalities that own their electric light plants the matter was decided by direct vote of the citizens. In a number of other states a referendum vote is necessary to the grant of street franchises for water, gas, electric light, telegraph, telephone, transit, etc. In several states such referenda are required by the constitution. (See Chapter III, comments on Table II.)

In New Orleans a specially interesting referendum has re-

cently been held (June '99) on the question of levying a tax to establish municipal water supply and better sewage. Women could vote, and vote, if they wished, by proxy, a dangerous provision as to the proxy part of it. The *initiative* was also used, as the referendum was secured by a petition signed by over 10,000 taxpaying voters.

9. Many referenda occur in counties, townships and school districts, fixing of county seats, division lines, school taxes, questions of municipal indebtedness, etc.

10. Local option is the referendum in full bloom. For years the cities and towns in Massachusetts have been voting at moderate intervals on the question of license or no license. Many of them, including even Cambridge and Chelsea, have voted against license. The total vote on the liquor question frequently exceeds the vote for candidates. For example, the Chelsea vote for mayor in 1896 was only 96 per cent. and the vote for school committee only 80 per cent. of the local option vote. Local option on the liquor question also exists in New York State, Mississippi, Arkansas, Texas, Georgia, Tennessee, etc., and the effects in educating the people on the temperance question, developing local patriotism and bringing it to bear upon the enforcement of law are most admirable.

The following cases of the use of the referendum in November, 1896, may be noted here:

1. Massachusetts voted on two amendments to the constitution. The amendments had been passed by two Republican legislatures and endorsed by the Republican convention, yet both were defeated by a 60 per cent. adverse vote, altho McKinley got nearly 70 per cent. favorable vote and the Republicans carried the state ticket also by a tremendous majority. This shows the independence of party ties which usually characterizes a vote on a well-defined measure, and illustrates the fact that "representatives," even when acting honestly, may not represent the real opinion of their constituents. The total vote for governor was 380,000, and on the amendments 276,000 and 261,000 respectively—only the more intelligent and fully posted voting on the latter.

2. New York voted on the Forestry Amendment passed

by two Republican legislatures and endorsed by the Republican Board of Forestry Commissioners. The amendment was defeated by 400,000 majority, tho the Republican Presidential electors had over 200,000 majority. The vote on the amendment was 321,486 for and 710,505 against. The total vote for President was 1,423,876.

3. In Minnesota nine amendments were submitted; one was defeated and eight adopted, the favorable votes varying from 90 to 58 per cent. on the different questions. Party lines were not drawn on the amendments.

4. In Missouri four amendments were voted on. They were not party measures and had not been discussed in the papers. The people voted them all down, probably thru the natural instinct of wholesome conservatism, that refuses to make a change until the reasons for it and the effects of it are understood. The votes on the amendments were respectively 57, 59, 62 and 80 per cent. of the Presidential vote, which was 20 per cent. larger than the ordinary vote in a non-presidential year.

5. Nebraska voted on twelve amendments. The votes varied from 54 to 70 per cent. in favor of the amendments and 50 to 53 per cent. in favor of the various Populist candidates. That is, the range of discrimination on measures was five times as great as on men. This shows that there is less partisanship and more judgment in voting on measures than in voting on men.

6. The Colorado people defeated an amendment submitted to them. It was complicated and not well understood, so that few voted upon it. Those who voted did not act on party lines but opposed the amendment because it contained some propositions thought to be suspicious, as possibly intended to cover a job. The amendment was favored not only by the legislature but by many state officers.

7. Idaho voted on three amendments, including one for equal suffrage. They were not party measures, but were brought before the people by an almost unanimous vote of the legislature. The equal suffrage amendment was recommended in the platform of every state convention. All the



amendments were adopted, equal suffrage by a 70 per cent. vote.

8. In Montana an amendment apparently beneficial was overwhelmingly defeated because, as I am told, it was suspected of concealing a trick.

9. In California six amendments were submitted by the same legislature; three were ratified and three defeated. The voting was not on party lines nor in any sort of agreement with the action of the people's "representatives." The second amendment was carried by 43,000 and the first *was defeated by 100,000* (162,945 against and 63,824 in favor). The highest vote on any amendment was 85 per cent. of the total vote for candidates.

10. Louisiana, Texas, Arkansas, Georgia, the two Dakotas and Washington also voted on constitutional amendments in 1896. Michigan has had twenty-nine referenda in twenty years, most of them vaguely stated and not largely voted on.<sup>1</sup>

The large experience of our cities and states with the true referendum, a small part of which has been recited, appears to establish some very important generalizations.

1. As a rule much greater *discrimination* is used in voting on measures than in voting on men.

2. The referendal voting is largely *independent* of party ties or the vote on men. Measure after measure is voted down by the same citizens who sustain the party and re-elect the legislature that proposes these measures. If it were not for the referendum—if the citizens had simply compound platforms to vote for, with candidates and party politics to ob-

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<sup>1</sup>For further cases of the use of the referendum and the Initiative, see the Direct Legislation Record, Vols. I to V, edited by Eltweed Pomeroy, of Newark, N. J., President of the National Direct Legislation League; also Oberholtzer's books, "King People" and "The Referendum in America;" the statute books of the various states and the municipal records and reports of cities and towns all over the United States. A number of referendum votes were taken at the recent elections (November, '98). Those in South Dakota, Washington and California were of special importance, as may appear hereafter. In California six amendments passed the legislature, but only one was carried at the polls.

The *principle* of the Referendum is recognized in every election in which the people are asked to vote for candidates in reference to their proposed action upon the issues of the campaign; the theory is, that, in voting for candidates who stand for certain measures, the people render a decision upon those measures. The whole theory of our elections, therefore, is based on the right of the people to decide upon measures, tho the mixture of issues and the unreliability of candidates make the present method of carrying out the theory very imperfect.

sure and overwhelm the inanimate issue, the people could not have expressed their will on the said measures—they would have been obliged to endorse measures they did not want in order to elect the men they did want.

3. Laws passed by legislatures and councils are frequently rejected by the people. "Representation" does not represent; or, more precisely, *unguarded* representation frequently misrepresents. Legislation by final vote of the people's delegates cannot be relied upon to represent the people's will, but on the contrary, may be relied upon to fail in such representation in a large proportion of cases, even when the delegates are acting honestly, with the aim of carrying out the wishes of the people.

4. The action of the referendum is conservative. Changes not supported by strong reasons are voted down.

5. Complex measures and those not clearly understood are apt to be defeated.

6. Anything that involves a job or political trick, or is suspected of being tainted with corruption or injustice, is voted down on general principles.

7. There is an automatic self-disfranchisement of the unfit. The more intelligent and public spirited citizens take the trouble to understand the measures presented for decision and vote upon them. The ignorant voter and the bigoted partisan who constitute the curse of the ballot, sustaining corrupt machines and bosses and every political iniquity, are the very ones who ordinarily care least about a referendum vote. There are no offices or jobs to be won by it; no party success to be scored by it; what's the use of voting on it? Lack of interest, carelessness or lack of knowledge and a fear that they might vote in the dark against their interest eliminates their vote, to the great purification and elevation of the ballot. Referenda on the liquor and gambling questions are, of course, exceptions. The political slums do vote in such cases, but the civic enthusiasm and educational energy of the better citizens, in prospect of a clear-cut vote on such an issue, generally lifts the ballot almost or quite as much as the omission of the slum vote in ordinary cases.

8. It is clear that Direct Legislation is not only in entire accord with American feeling and history, but is deeply imbedded in our institutions. Both the principle and the practice of the referendum are familiar to our people, and its methods are not only in constant use in our system of law-making, but have a *monopoly* of a considerable space at each end of the scale of legislation that is under discussion, <sup>4</sup> and are *open to engagements at the option of the legislative authorities* at all intermediate points.

Direct Legislation is the sole method used at the top of the scale in making and amending state constitutions; and at the bottom of the scale in many states in the legislation of towns and school districts. In the intervening spaces, city, county and state legislation, the initiative or referendum or both may be put in practice whenever and wherever the legislators and councilmen so desire. The only difference is that at the ends of the scale the referendum is either compulsory or else the option rests with the people, whereas in general as to intermediate areas the referendum is not compulsory, and the option is not with the people, but with the legislators. Now it is an undoubted fact that looking at the matter in a broad way, the legislation at the two ends of the scale we are considering is vastly superior to the legislation in the intervening fields. Our constitution and the acts of our town and school district meetings are on the whole just, public-spirited, clear, concise, the pride of our jurists, historians and philosophers—incomparably the best legislation we have; while our statutes and the acts of our city councils are voluminous, complex, ambiguous, tainted with corruption and saturated with the spirit of private interest—a by-word all over the civilized world, so that government builders in Australia urge upon

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<sup>4</sup> I do not include national legislation. It seems to me that the safest and best plan is to extend the referendum to city and state legislation over a considerable portion of the country before we attempt to deal with the initiative and referendum in Federal affairs. It is best to solve the simpler problems first, that we may be better prepared to solve the more difficult ones. The city referendum is the key to the state referendum, and both will lay the foundation for the national referendum. The principles and arguments involved, however, are practically the same thruout, and experience, discussion and research in any department of Direct Legislation throws light on the whole question. Moreover, in the present condition of our law it is impossible to separate state and municipal government. These facts may explain to the reader the method of treatment adopted in this chapter.

their people the necessity of avoiding a reproduction of the American system; a disgrace to our civilization, a menace to our institutions. It would require a Swift or a Carlyle to find words to describe the botch work with which our statute books are annually disfigured, the inefficiency, confusion and corruption that have flowed from the *abuse* of the representative principle.

In the field where the referendum is compulsory, or at the option of the people there is little or no trouble; but in the field where this is not true there are legislative evils, the remedy for which is universally regarded as one of the greatest problems of the age. Is it not clear common sense to try in the middle areas the method that works well at both ends? Is it not worth while at least to try the experiment of using the successful method in place of the unsuccessful one? especially as the only change required is the very simple and obviously just and proper one of transferring the referendal option from the people's delegates to the people themselves, so that city and state enactments<sup>1</sup> may be brought within the rule that applies to town affairs and constitutional provisions, sweeping the whole extent of state and local legislation within the control of the beneficent principle of actual, continuous and effective popular sovereignty. In almost every state we have a solid stone road at each end of the legislative highway, with a treacherous bog in the middle. Shall we not build the stone road thru the bog, so we shall have, from end to end, a safe and solid roadway?

There can be no doubt about the answer that is due to these questions. The referendum has shown itself the best of all the legislative methods known to us, and it is the part of wisdom to extend its field of usefulness, and apply it to correct the abuses resulting from less efficient methods. If a farmer should find that a method in use in two of his fields produced far better results, with less expense, than the methods he used on the rest of his farm, he would be a fool if he did not extend the use of that better method to all the fields he possessed to which the said method was reasonably applicable.

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<sup>1</sup> See last preceding note.

## THE MOVEMENT IN AMERICA.

*To Perfect the Representative System by Fuller Provisions  
for the Initiative and Referendum.*

## A.—ACCOMPLISHED FACTS.

That our people believe in real self-government and are not insensible to the benefits to be derived from an extension of the rights of effective petition for the enactment or submission of a law or ordinance, is shown by the splendid progress made in recent years toward a fuller provision for the use of the initiative and referendum.

1. San Francisco has adopted the initiative and referendum (on a 15 per cent. petition) in respect to all ordinances and amendments to the charter to which the people choose to apply them, and ordinances involving the grant of a franchise for the supply of light or water, or the lease or sale of any public utility or the purchase of land worth more than \$50,000, *must* be submitted to the people. (May, 1898. See Chapter III.)

2. Alameda, Buckley, Seattle and Blacksburg have also adopted Direct Legislation. The percentage for effective petition runs from five per cent. in Buckley (Washington) to 51 per cent. in Blacksburg (Virginia), which is a small place with a large idea of economy, the result being a plan for the initiative and referendum all in one, the petition being large enuf to carry the proposition without any separate referendum vote. This does not seem a wise plan. A moderate percentage of the citizenship ought certainly to have the right of bringing a matter before the people for decision by *secret* and *authentic* ballot.

3. Seattle, Washington, with 42,000 inhabitants, adopted the initiative and referendum by a strong popular vote. Five times the local bosses and aristocracy prevented the question from going to the people, but at last the long struggle was won. It takes 25 per cent. of the voters to exercise the initiative as the law now stands, but the beauty of a D. L. Law, even with a high percentage, is that it places it in the power of the people to reduce the percentage to 5 or 10 per

cent. whenever they see fit. It was probably a wise thing under the circumstances to begin with a high percentage, because a law framed in this way could be more easily carried, and the initiative once in the people's possession, they can amend the law and put the percentage wherever they choose.

4. The charter of Greater New York was submitted to the people for approval or rejection. The referendum principle, however, has not been given its due control *inside* the charter.

5. In five states municipalities have been given the right to adopt home-made charters by referendal vote, and in three of these states the popular initiative is provided for, Minnesota requiring only an 8 per cent. petition to frame a new charter and a 5 per cent. petition for the submission of an amendment to the charter. (See Chapter III, Comments on Table I.) In a sixth state, Ohio, a strong movement is on foot to obtain a constitutional amendment giving municipalities a right to frame their own charters on petition of 5 or 10 per cent. of the voters of the municipality. As Mayor Jones, of Toledo, and other prominent men are leading the movement, it is likely to be a success.

6. The municipal initiative in respect to street franchises and public ownership of public utilities has been recognized by several states in their recent legislation, and the referendum by many states. (Chapter III.)

7. It is coming more and more to be the custom, even in special legislative grants of franchises, etc., to insert a clause requiring submission of the matter to a vote of the people in the locality affected.

8. It has come to be the practically universal custom to require a municipal referendum on local bond issues, and other questions of indebtedness.

9. Nebraska passed a law in 1897 providing for municipal Direct Legislation on a 15 per cent. petition, or 20 per cent. if a special election is desired to determine the matter at issue. But only one special election can be held under this act in any one year unless the petitioners for it shall deposit with the city or village clerk a sum of money equal to the expense of such election.

The right to propose ordinances for the government of any city or other municipal division of the state may be exercised by 15 per cent. of the voters of such city or municipal division as well as by the mayor and councilmen or other governing authorities of the municipality. The petition must contain the full text of the proposed ordinance. If the mayor and council pass the proposed ordinance within thirty days after the petition is filed, the matter apparently does not go to the polls unless there is a petition for a referendum. If the council amend the proposed ordinance, both the original proposal and the amended ordinance go to the people.

No ordinance passed by the council, except an *urgency measure*, goes into effect till thirty days after its passage, and the voters by a 15 per cent. petition, filed with the city clerk within said thirty days, may demand a referendum on the ordinance at the next general election, or by a 20 per cent. petition they may require a special referendum, which must be held not less than fifteen nor more than twenty days after the filing of the petition. Ordinances relating to the immediate preservation of public peace or health or items of appropriation of money for current expenses, which do not exceed the corresponding appropriations of the preceding year shall, by unanimous yea and nay vote of the council and the approval of the mayor, be deemed to be *urgency measures*.

The law does not go into effect in any city until accepted by the voters thereof.<sup>1</sup>

This is a condensation of the chief provisions of the act. It is much longer and contains more detail than need be, and is by no means perfect in other ways. The 15 per cent. requirement is too high; it makes the use of the referendum too cumbersome and difficult. There is reason to believe, also, that in respect to some matters, such as ordinances involving important franchise grants, the referendum should be obligatory. Again the percentages and methods adapted to the

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<sup>1</sup> Party lines were drawn to some extent in the vote on this Nebraska bill, the Republicans voting against it. This probably arose chiefly from the fact that the bill was introduced by their political opponents. One of the main causes of the strength of the measure was the support it received from the various labor organizations.

municipal initiative and referendum in one place may not be best in another place, wherefore it would have seemed wiser to authorize the adoption of the principle of Direct Legislation by any municipality, and let it make its own laws as to percentages and methods of carrying out the principle, subject, perhaps, to a few broad limitations, such as the obligatory *franchise* referendum and a *minimum* percentage, altho even these matters might safely be left to the municipality in most cases, if real home rule were bestowed upon it.

10. The Arizona Territorial Legislature in 1897 passed a municipal Direct Legislation bill applying to cities casting a vote between 600 and 1,000. Petitions must be signed by 30 per cent. of the legal voters of the city, of which signers one-half, at least, must be taxpayers. It is a clumsy law, and applies at present only to the city of Prescott, but it is a good entering wedge, and a territorial law may have great strategic value, because it requires the approval of Congress, and may be the means of bringing the subject of Direct Legislation to discussion and vote in Washington, thus drawing the attention and thought of the people to the matter in a new and vital way, and possibly securing the endorsement of the National Government for the Referendum Principle.

11. In November, 1898, the people of South Dakota adopted a constitutional amendment securing the initiative and referendum in state and municipal affairs.<sup>1</sup> A five per cent. petition is sufficient for either the initiative or referendum, and all measures passed by the people's representatives are subject to referendum petition except such laws as may be necessary for the immediate preservation of the public peace, health or safety, or support of the government and its existing public institutions.

The provision is brief, sweeping, strong; but lacks somewhat in definiteness. Note especially the failure to name any period between the passage of a law and its taking effect, during which a referendary petition may be filed. An ad-

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<sup>1</sup> The amendment was carried thru the legislature mainly by the Populists. It passed the Senate (1897) by a party vote, but in the House received the votes of all the Populists, six Republicans and two Democrats.



verse legislature granting a corrupt franchise or "railroading thru" a dangerous law might evade the referendum by making the petition period too short. The amendment says that the legislature shall "enact and submit" laws proposed by the people. It would be better to say that the Governor or Secretary of State shall submit proposed laws, unless enacted as proposed, in which case they should be subject to referendary petition, as in other cases. A Direct Legislation amendment should also state distinctly that the people may propose amendments to the state constitution or the city charter, and that no state enactment adopted by the people shall be repealed or amended by the legislature without submitting the matter to the people, and that no municipal enactment adopted by the citizens shall be altered or repealed by the city council or municipal authorities without a referendum.

12. The Oregon Legislature has passed a D. L. Constitutional amendment, which, if approved by the next legislature, will be voted on at the polls in June, 1902. The law does not apply to municipalities, but only to state enactments.

The initiative requires an 8 per cent. petition filed with the secretary of state at least four months before the election at which the measure is to be voted on.

The referendum may be ordered by the legislature, or may be demanded (except in *urgency* cases) by a 5 per cent. petition filed with the Secretary of State within 90 days after the final adjournment of the legislative assembly on whose action the referendum is sought. Laws necessary for the immediate preservation of the public peace, health or safety are *urgency* measures.

The vote in the legislature was overwhelming and absolutely non-partisan—43 ayes to 9 noes in the House, and 20 ayes to 8 noes in the Senate. It was introduced in the House by a Republican and in the Senate by a Populist, and not a man in either house attempted or suggested anything of a partisan nature in the discussion and passage of the bill.<sup>1</sup>

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<sup>1</sup> Direct Legislation Record, Vol. VI, p. 1. Since this chapter was set up the Legislature of Utah has passed a D. L. amendment to be submitted to the people at the next general election. See *infra* Appendix on "Legislative Forms."

## B.—EFFORTS.

In the last few years Direct Legislation amendments or laws have been introduced in almost every legislature in the country. In 1897 Direct Legislation measures were introduced in the Legislatures of Indiana, Ohio, Michigan, Wisconsin, North Carolina, Delaware, New Jersey, Maine, Massachusetts, Missouri, Minnesota, Iowa, Kansas, Nebraska, Colorado, Washington, Montana, Idaho, etc. It is said that "every state legislature west of the Mississippi, except, perhaps, Arkansas and Louisiana, had a Direct Legislation measure before it."<sup>1</sup> Before that amendments had been pushed in Massachusetts, New York, New Jersey, Illinois, Minnesota, Nebraska, Kansas, both Dakotas, Colorado, Montana, Idaho, Oregon, Washington, California, and perhaps elsewhere. In some states vigorous work has been done for the referendum at every opportunity since 1894. In a number of cases the measure has passed one House, and in some cases both Houses (but failed for lack of a 2-3 vote, or for some other reason), and in still other cases the bill came within a few votes of passing.<sup>2</sup>

In Washington a Direct Legislation amendment passed the House (1897) by a vote of 63 to 12. In Kansas an amendment drafted by Chief Justice Doster and Senator Young passed the Senate 29 to 10, and the House 76 to 42, the Republicans for the most part voting against it and the Democrats and Populists for it. It needed 8 more votes for the necessary two-thirds. The bill required 15 per cent. for effective petition. In Montana a Direct Legislation amendment passed the House 41 to 27—21 Populists, 19 Democrats and 1 Republican for it; 21 Democrats and 6 Republicans against it; defeated for lack of the needful two-thirds vote. The bill engrossed the attention of the legislature for 23 days, and held all other legislation in check until it was decided. The Hon. M. J. Elliott, who introduced the measure, says:

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<sup>1</sup> Direct Legislation Record, Vol. IV, p. 21; see also p. 6.

<sup>2</sup> Several D. L. bills were introduced in the '99 session of the Penn. Legislature. One of them was very generally and favorably commented on by the press of the state, but it died in committee. See Appendix, "Legislative Forms."

"It took the combined force of plutocracy among the Republicans and Democrats to defeat it." It called for 21 per cent. petitions, which is high, yet the law would open the way for the reduction of the percentage by a vote of the people on that point alone, disentangled from the claims of parties or candidates, or the pros and cons of other issues. Next year a bill is to be introduced with provisions for 10 per cent. petitions.

In 1894 the Hon. Richard W. Irwin, a leading Republican of Massachusetts, introduced a bill giving Direct Legislation to such cities as might accept the act. He secured the passage of the bill thru the House by a vote of 150 to 3, but it was lost in the Senate, altho Direct Legislation was advocated in every political platform in the State.

In New Jersey a Direct Legislation amendment came within 2 votes of a favorable issue. It was introduced in 1894 by the Hon. Thomas McEwan, the Republican leader of the House,<sup>1</sup> and was championed in the Senate by Mr. Adrian, the leader on the Democratic side and a former President of the Senate. The Legislature listened to addresses in favor of the amendment by Mr. J. L. Sullivan, the author; Samuel Gompers, President of the American Federation of Labor; Rev. H. D. Opdyke, representing the Farmers' Alliance; Samuel J. Sloane representing the Prohibitionists of the state, and other men of weight, including some of the officers of the National Direct Legislation League.

The Rev. Opdyke said in part:

"Make the Referendum the law of the state and a less number of officers will be needed to administer the government, and they will work at reduced salaries, to the relief of the taxpayers. . . . . Pass this amendment and the licensed liquor traffic of the state will be swept out of existence as if struck by a western cyclone. . . . . This is not a party measure. It is approved by all parties—Democrats, Republicans, Prohibitionists and Populists work together for it. . . . . The people are determined to get the government back to themselves. It is an absolute necessity. . . . . In conclusion let me say that as farmers we have never asked for much from the legislature, and the little we have asked

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<sup>1</sup> Mr. McEwan afterward went to Congress, and has introduced Direct Legislation resolutions into the last two Congresses and in the Republican National Convention of 1896, but his efforts have not received as much encouragement in these quarters as could be wished.

is not yet in sight. But the farmer demands the enactment of this measure. He wants to do some lawmaking himself, and you may rest assured that when the farmers, as well as the lawyers, become law-makers, we will have fewer laws but better government, less evil and more virtue."

Mr. Sloane said:

"We have submitted petitions in which there were thousands of names of the best citizens of our state, only to see these petitions laughed and scoffed at, smothered in committee, and in one instance thrown around the chamber from member to member, as a lot of school boys might pelt each other with paper snowballs. We have seen these so-called representatives cowering under the lash of the bosses, doing the bidding of thieves in opposition to their own expressed sympathies and beliefs."

### C.—THE RISING TIDE OF THOUGHT.

The drift of public sentiment toward the extension of the initiative and referendum to city, state and ultimately to national legislation, is one of the most emphatic tendencies of our time.

Professor A. V. Dicey, of Oxford University, wrote on the Referendum in *The Nation* in 1886.

In 1888 Boyd Winchester, U. S. Minister to Switzerland, began to write about Swiss institutions.

In 1889 Professor Bernard Moses published an essay on "The Federal Government of Switzerland," and Sir Francis Adams' "Swiss Confederation" appeared the same year.

In 1890 the *Universal Review* contained an article on the Referendum, by E. A. Freeman, and W. D. McCrackan wrote a series of letters on the Initiative and Referendum for the New York Evening Post, and followed them with articles in the *Arena*, *Atlantic* and other periodicals, and with lectures in various places.

In 1891 Boyd Winchester's book, "The Swiss Republic," came out, and some of McCrackan's articles appeared in the *Arena*, etc.

In 1892 McCrackan's "Rise of the Swiss Republic" and J. W. Sullivan's "Direct Legislation thru the Initiative and Referendum" were published. Mr. Sullivan had been studying Direct Legislation for some years; had been to Switzerland in 1888 to study the subject in the home of its highest development. He began to write about it in the New York Times in 1889, and his book, published three years later, is undoubtedly the best popular statement of the subject yet made.

In 1894 Mr. Sullivan started the Direct Legislation Record, the editorship of which was afterward transferred to Mr. Eltwed Pomeroy, of Newark, N. J. The Record is beyond question the

finest publication devoted to one specific reform that has yet appeared in America.

The first Direct Legislation organization was formed in Newark in 1892. There is now a National Direct Legislation League, of which Mr. Pomeroy is president.

Such was the beginnings of effective thought on this subject in England and the United States. To-day it requires six or eight pages of small type to record the titles of the books and leading articles that have been published in this country on the subject of Direct Legislation. The popular movement began in 1892, with the publication of Mr. Sullivan's book, and has been greatly aided by Mr. Pomeroy's editorial work in the *Direct Legislation Record*, together with his extensive lecturing tours and skillful efforts to establish centers of Direct Legislation work in various parts of the nation, and to strengthen the National Direct Legislation League. To the work of these two men and the inherent sense and justice of their cause is largely due the fact that now, after less than six years of discussion, over three thousand newspapers and magazines favor Direct Legislation, and at least four millions of voters are ready to sanction its principles at the ballot box. With the single exception of the Public Ownership of Monopolies, no other progressive idea has had anything like so rapid a growth as this.

Those who have read this chapter from the beginning will realize (if they did not do so before) that there is nothing partisan about the referendum movement. Further proof of this is found in the fact that the measure has received strong support from the press of all shades of political partisanship—Republican, Democratic, Prohibition, Populist and Socialist. In some states it has been made a plank in the platform of every party in the state, and thruout the country numerous platforms—Republican, Democratic, Prohibition and Populist—have declared in its favor. The National Convention of the People's Party at St. Louis in 1896 put a Direct Legislation plank in the platform and ordered the use of the initiative and referendum in the internal government of the party. A Direct Legislation plank has been adopted by the party in

every state where it has an organization, except in a few southern states. Democratic state conventions in Illinois, Michigan, Massachusetts, Minnesota, Nebraska, Ohio, California, Washington, Oregon and other states have adopted vigorous Direct Legislation planks, and a strong effort was made by William J. Bryan and other leaders to put it in the National Democratic platform, made at Chicago in 1896. It came within one vote in committee. One more progressive man would have put the heart and soul of Democracy into the Chicago platform. The Prohibition party has put a Direct Legislation plank into several of its state platforms, and might have adopted the one proposed for the National platform in 1896 if the Convention had not split on the money question before it got a chance to consider the Direct Legislation plank. The Republican party has adopted Direct Legislation in some of its state conventions, and it was urged by Congressman McEwan for the National platform in 1896, but failed of success. The Liberty Party, the Union Reform Party, the National Party, the Union Party, the Single Taxers and the Socialists have all declared in favor of the referendum. In England the Conservative Party has stated the referendum as one of its leading aims, and in Australia a powerful movement is on foot to secure the obligatory referendum in case of any deadlocks or legislative disagreement between the two Houses.<sup>1</sup>

Those of every party who believe in government by the people favor the extension of the referendum. So do those who see the irresistible drift toward democracy, and wish that the movement may be smooth and peaceful instead of harsh and explosive. Even far-sighted men of wealth and power without much philanthropy favor the referendum, because they understand that the people are more just and wisely conservative as well as more wisely progressive than the ordinary legislature, congress or parliament. Only the *short-sighted, reckless* plutocrats and politicians, and those who are

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<sup>1</sup> Senate Document, 340, 55th Congress, second session, July 8, 1898. Both in England and Australia the referendum is advocated by statesmen of the highest character and greatest eminence.

*unwilling to trust the people*, or do not wish them to govern themselves—only such oppose the referendum.

Among the supporters of Direct Legislation are such Republicans as John Wanamaker, Governor Pingree Senator Irwin and Congressman McEwan; such Democrats as William J. Bryan and Geo. Fred. Williams; such Populists as Senator Marion Butler, Chief Justice Doster and Hon. Ignatius Donnelly; such Prohibitionists as Ex-Gov. St. John and John J. Woolley; such writers as Henry D. Lloyd, B. O. Flower, Prof. R. T. Ely, Prof. J. R. Commons, Prof. E. W. Bemis, Wm. Dean Howells and Charles M. Sheldon; such preachers as the Rev. B. Fay Mills, Dr. Lyman Abbott, Dr. George C. Lorrimer, Rev. Russell H. Conwell and Rev. Washington Gladden, and such leaders of labor as Samuel Gompers and Eugene V. Debs—organized labor is, in fact, almost a unit for Direct Legislation.

We have seen the Farmers' Alliance and Industrial Union with three million members, and the American Federation of Labor, nearly a million strong, stand shoulder to shoulder on this great issue, heartily endorsed by the farmers, and until December, 1894, the sole political demand of the Federation of Labor. The Knights of Labor, the Brotherhood of Locomotive Engineers, the order of Railway Conductors, and many other labor organizations favor Direct Legislation. A considerable number of trades unions use the initiative and referendum in their own affairs.

The movement is endorsed not only by a large part of the press<sup>1</sup> and by various political parties and labor organizations, but also by church conferences,<sup>2</sup> Christian Endeavor Societies, Epworth Leagues, Good Roads Associations and numerous other societies. And in private conversation, according to my experience, five out of six persons admit the fairness and desirability of Direct Legislation as soon as they understand what it means.

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<sup>1</sup> It is estimated that "more than 3,000 newspapers and magazines are advocating direct legislation as a primary reform." A. A. Brown in *Arena*, Vol. 22, p. 98. The number stated amounts to about one-seventh of the total press of the country.

<sup>2</sup> *Direct Legislation Record*, 1896, p. 18.

Among the eminent men and women who have advocated the extension of Direct Legislation are the following:

Gov. Pingree, of Michigan.	William J. Bryan.
Rev. Washington Gladden.	Rev. Russell H. Conwell.
Mary A. Livermore.	Prof. John R. Commons.
Samuel Gompers.	Hon. Geo. Fred. Williams.
Hon. John Wanamaker.	Wm. Dean Howells.
Rev. Lyman Abbott.	Rev. B. Fay Mills.
Robert Blatchford.	B. O. Flower.
Lord Salisbury.	Prof. George D. Herron.
Edwin D. Mead.	Sir Francis Adams.
Henry D. Lloyd.	Arthur J. Balfour.
Rt. Rev. F. D. Huntington.	N. O. Nelson.
Rev. R. Heber Newton.	Rev. W. I. Rainsford.
John S. Crosby.	Gov. Thomas, Colorado.
Hon. C. O. Post.	George E. McNeill.
Florence Kelly.	Pres. G. Droppers.
Pres. Thos. E. Will.	Prof. E. W. Bemis.
Ex-Gov. John P. St. John.	Robert Treat Paine, Jr.
Gov. Lind, Minnesota.	Gov. Walcott, Mass.
Gov. Rogers, Washington.	Gov. Smith, Montana.
J. St. Loe Strachey.	Rev. W. D. P. Bliss.
Gov. Lee, South Dakota.	U. S. Sen. Marion Butler.
U. S. Senator Pettigrew.	Con. D. B. Henderson, Ia.
Dr. George A. Gates.	Dr. C. F. Taylor.
Lord Rosebury.	Hon. John G. Woolley.
Prof. Lecky.	Prof. Dicey.
Ex-Mayor McMurray, Denver.	Mayor Jones, Toledo.
Prof. George Gunton.	Prof. Helen Campbell.
Edward Bellamy.	Frances E. Willard.
Thomas Jefferson.	Abraham Lincoln.

Other eminent persons favorable to the extension of the referendum have been named in preceding paragraphs, and still others I know to be favorable, but have nothing definite in writing or print expressing their views.

It may be well to quote a few lines from some of the thinkers named in order to show how emphatic their attitude is and the grounds of their belief.



Wm. Dean Howells said in a letter to me dated May 22, 1897:

"I am altogether in favor of the Initiative and Referendum as the only means of allowing the people really to take part in making their laws and governing themselves."

A letter from Rev. Lyman Abbott contains these words:

"In my judgment the remedy for the evils of democracy is more democracy; a fresh appeal from the few to the many; from the managers to the people. I believe in the Referendum, and, within limits, the Initiative, because it is one form of this appeal from the few to the many."

The Hon. John Wanamaker wrote me in August, '97:

"I heartily approve of the idea of giving the people a veto on corrupt legislation. The movement to secure for the people a more direct and immediate control over legislation shall have my support. I trust such a movement will receive the thoughtful attention of all who would improve our political and industrial conditions. I am willing to trust public questions to the intelligence and conscience of the people."

In July, '97, I received the following from Frances E. Willard, the great President of the World's Woman's Christian Temperance Union:

"I believe in Direct Legislation, and think it is so greatly needed that language cannot express the dire necessity under which we find ourselves. The reign of the people is the one thing my soul desires to see; the reign of the politician is a public ignominy. I also believe that Direct Legislation is certain to become the great political issue in the immediate future. The people are being educated by events. They are coming to see that there is no hope for reform under the existing system of voting."

The following is from a letter postmarked June 5, 1897, from Henry D. Lloyd, author of "Wealth Against Common-wealth" and "Labor Copartnership:"

"Direct Legislation—the Initiative and Referendum—must be supported by every believer in free government. . . . The people have carelessly allowed their delegates in party, corporation and government to become their rulers, and now they are awakening to the startling fact that the delegate has become their exploiter. *The people are losing control of their means of subsistence because they have lost control of their government*, the most powerful instrumentality for the creation and distribution of wealth in society. Its government must be recovered by the American people—

peaceably, if possible; but it must be recovered. Direct Legislation would be the ideal means for this peaceable revolution. If the revolution is to be accomplished otherwise, Direct Legislation will stand forth in the new order as the only means for expressing the popular will that a free people will exercise. No future republic will ever repeat the mistake of giving its delegates the opportunity to become its masters."<sup>1</sup>

Wm. Jennings Bryan, the famous orator and Democratic leader says:

"Democracy is not merely a party name. Democracy has a meaning. Democracy means a government in which the people rule, and that is all we ask for. We are willing to submit any question that concerns the people of this country to the people themselves."

"The principle of the initiative and referendum is democratic. It will not be opposed by any democrat who indorses the declaration of Jefferson, that the people are capable of self-government, nor will it be opposed by any republican who holds to Lincoln's idea that this should be a government of the people, by the people and for the people."

Samuel Gompers, President of the American Federation of Labor, with nearly a million members, writes these weighty words:

"All lovers of the human family, all who earnestly strive for political reform, economic justice, and social enfranchisement, must range themselves on the side of organized labor in this demand for Direct Legislation."

Lord Salisbury, the great English statesman, prime minister and leader of the Conservative party of Great Britain, has said:

"I believe that nothing could oppose a bulwark to popular passion except an arrangement for deliberate and careful reference of any matter in dispute to the votes of the people, like the arrangements existing in the United States and Switzerland."

The Rev. B. Fay Mills, the celebrated evangelist and eloquent preacher, writes:

"I will hold up both hands for the Initiative and Referendum. I sometimes think I agree with those who feel that this should be the next step in social reconstruction, as I certainly believe it will be productive of all others."

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<sup>1</sup> These and other letters were loaned to President Pomeroy, and appear in Senate Document, 340, 55th Congress, second session, July 8, 1898.

Prof. Lecky, Conservative Member of Parliament and author of "Democracy and Liberty," "History of European Morals," etc., says:

"The referendum would have the immense advantage of disentangling issues, separating one great question from the many minor questions with which it may be mixed. Confused or blended issues are among the greatest political dangers of our time. . . . The experience of Switzerland and America shows that when the referendum takes root in a country it takes political questions, to an immense degree, out of the hands of the wire-pullers and makes it possible to decide them mainly, tho perhaps not wholly, on their merits, without producing a change of government or of party predominance."

Prof. George D. Herron says:

"Not the centralization but the diffusion of power is the safety of the present."

Dr. George A. Gates, President of Iowa College, writes:

"I have more confidence in Direct Legislation as a means of applying the principles of a true democracy to our public affairs than in any other movement before the public. Our American democracy is very democratic in form, but as matters now stand, very undemocratic in fact."

J. St. Loe Strachey, editor of the London Spectator, says:

"The man who refuses to agree on the referendum cannot be true to the essential principle of democratic government."

Andrew Jackson said in his inaugural:

"So far as the people can, with convenience, speak, it is safer for them to express their own will."

Governor Pingree strongly endorses the referendum principle, and in respect to important municipal franchises, would make the submission obligatory. In his message to the 40th Michigan Legislature, p. 28, he urges "the passage of an act making it requisite to the validity of a franchise in the streets of any municipality that the ordinance granting such rights shall be voted upon and approved by the citizens."

Professor Geo. Gunton, a New York editor and Republican defender of trusts and monopolies, yet a believer in good government, discussing the initiative and referendum of the San Francisco charter, says:

"Whether much use is made of this privilege or not, it will undoubtedly create among San Francisco's aldermen a livelier sense of the representative character of their office and a keener regard for the course of public opinion." And then, speculating upon the possible results of inaugurating such a system in New York city, he adds: "Extension of educational facilities and various public improvements could either be voted directly, or a club held over the head of the Administration and Municipal Assembly which would very materially stimulate progressive action on their part. Then, too, there would undoubtedly be fewer franchises granted for inadequate compensation, and fewer contracts let to political favorites if it were known that all such ordinances could be promptly vetoed by a plebiscite."

Hon. John G. Woolley, the great temperance orator, says:

"It ought to be possible for the people to order a plebiscite upon the liquor question or any question that seems great enuf to them. . . . The Initiative and Referendum would be dignified, conservative, simple, safe, powerful. . . . I am by instinct and training an adherent to the Hamiltonian idea of government, but my reason, my intelligence impels me to assent to Direct Legislation as necessary to the continuance of our free institutions."

Do not fail to note how constantly the opinions cited emphasize the idea that Direct Legislation is essential to self-government. That fact lies at the heart of the whole discussion. I have sometimes listened to men dispute about the referendum for half an hour or more, and then, when it was possible to get a word in edgewise, asked if they believed in self-government here in America, and on a favorable reply, which has rarely failed, I have said, "Well then you believe in the referendum, for it is nothing but self-government, and self-government is impossible without it. There may be difficulties in extending the referendum, as there usually are in any great advance, but remember they are difficulties with *self-government*; and if you really believe with the great mass of the American people that self-government is right and necessary for justice, safety, manhood, education and development, it is your duty to set about trying to overcome whatever difficulties you find in the way." I have yet to see the person who has any answer to make to this if the justice of self-government is once admitted, so manifest is it that the referendum and self-government are one and the same thing.

We have seen, in the early part of this chapter, that Thomas Jefferson believed in Direct Legislation (tho that expression was then unknown), and tried to get it into the Virginia constitution. Some paragraphs from his writings will show how strong was his feeling:

"Governments are republican only in proportion as they embody the will of the people and execute it. . . . Were I to assign to this term (a republic) a precise and definite idea, I would say, purely and simply it means a government by its citizens in mass, acting directly and personally according to rules established by the majority, and that every other government is more or less republican in proportion as it has in its composition more or less of this ingredient of the direct action of the citizens. . . . The further the departure from direct and constant control by the citizens, the less has the government of the ingredient of republicanism. . . . And believing, as I do, that the mass of the citizens is the safest depository of their rights, and especially that the evils flowing from the duperies of the people are less injurious than those from the egotism of their agents, I am a friend to that composition of government which has in it the most of this ingredient. . . . An elective despotism was not the government we fought for."

Abraham Lincoln was also a believer in the principle of Direct Legislation, and sought to put it in practice to settle one of the most momentous questions in our history. His famous phrase, "a government of the people, by the people, and for the people," is an exact definition of a system based upon and effectively controlled by Direct Legislation, and it will not harmonize with any other system.

In 1854 Mr. Lincoln said at Peoria, "According to our ancient faith, the just powers of government are derived from the consent of the governed. \* \* \* Allow all the governed an equal voice in the government, and that and that only is self-government."

Early in the war Lincoln made an effort to secure an arrangement that would terminate hostilities and settle the questions of union or disunion and slavery or no slavery by means of a direct vote of the whole people. Gentlemen were sent to talk with the President and Secretary of the Confederacy to see if an agreement could be made to go to the people with two propositions—peace with disunion and confederate

independence as the southern proposition—and peace with union, emancipation, no confiscation, and universal amnesty as the northern proposition; the citizens of all the states north and south to vote “yes” or “no” on these two propositions at a special election, both governments to hold themselves bound by the result of the vote. If such an agreement had been made it is probable that union and emancipation would have been secured without further strife. A large number of citizens even in the south were Union men, and perhaps the high probability of a Union majority in the referendum was what influenced Pres. Davis to refuse to entertain the proposal for a settlement by ballot—a Union majority would mean the collapse of his Presidency.<sup>1</sup>

### THE REFERENDUM MOVEMENT

#### *Part of a World Movement toward Liberty, Peace and Democracy.*

A little more than a hundred years ago every nation in the civilized world was under an absolute aristocracy. There were some gleams of freedom in England—she had her Magna Charta and Bill of Rights and her House of Commons, but the suffrage was exceedingly limited and the distribution of representation outrageously unjust, the majority of seats in the House being controlled by a few nobles and men of wealth. Only in local affairs did the principles of self-government find anything like adequate expression.

Transplanted in America local self-government and the fundamentals of the Magna Charta and the Bill of Rights grew into the ideal of *complete* self-government. England trod upon this ideal, and it took up arms and drove the monarchy out of the colonies.

Voltaire and Rousseau stirred the mind and heart of Europe. English thought, transformed and glorified in the flames of our Revolution, was taken to France by Franklin, Paine and Lafayette, and by the French soldiers returning from America. France took fire, and the French Revolution burned up the Bourbon throne.

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<sup>1</sup> See the full story by Edmund Kirke in the *Atlantic*, September, 1864. See also Senate Document, 340, July 8, 1898, p. 86.

Napoleon's armies shook every throne on the continent, overturned the most of them, put plebians in imperial places, annihilated the "Divine Right of Kings" and scattered the seeds of democratic thought all over Europe. The soldiers of the Allies returned from France talking of freedom and popular government. The printing press fed the new thought, and the students in the universities were full of English, American and French ideas of liberty. The French revolution was smothered, but only for a moment. It burst out again and again, not only in France, but in Italy, Austria, Germany, Spain and other countries. Kings and Emperors granted constitutions to appease the people. England reformed her representative system, greatly extended the suffrage, passed splendid secret ballot and civil service laws, and took effective measures against corrupt practices in elections. America built a republic, with government by the people in town affairs and constitution making, and for the rest a mixture of government by delegates with government by the people. And Switzerland evolved a republic based on the idea of government *by the people* with the *aid* of representatives.

A century full of tremendous movement in the direction of democracy: 1775 all absolute monarchy or aristocracy; 1875 not an absolute government in America or Europe except in Russia and Turkey; all the rest on the high ground of constitutional government with representative houses and wide suffrage, or still further up the slope where kings and nobles entirely vanish, with a few almost at the top, where the people's will is sovereign all the time. *From absolute king to sovereign people—from one to all—that is the fundamental movement of the age*; and do you think it will stop part way? Will forces that the kings and emperors and aristocracies of Europe have not been able to resist be held in check by a few politicians and plutocrats? Not if the people continue to think. Not if the press and the school can be kept from the schemers' control. If the movement towards democracy does not stop—if the evolution of equality in government does not cease, Direct Legislation must come. It *has* come in Switzerland and to a large extent in America, is used to some

extent in England and France, is vigorously demanded in New Zealand and Australia, and is bound to come here and in every other country where the trend to democracy is strong, because there is no other way in which the rule of the few can be entirely supplanted by the rule of the many.

The diffusion of power is the mightiest idea that is moulding the world to-day, except the principles of love, justice and brotherhood from which it is a corollary. Direct Legislation has an inevitable part to play in the progress toward diffusion of power, and is therefore sanctioned and necessitated by the principles from which the ideal of diffusion is derived.

Direct Legislation aiding diffusion will help the cause of peace as well as the cause of liberty and democracy. Since the dark ages very few wars have been brought about by the common people. The reason the world is still drenched with blood every few years is that the men who decide on war are not, as a rule, the ones who do the fighting or suffer the losses of the conflict. If the men who voted war had to stop the bullets and pay the taxes, arbitration would soon replace battle. If conciliatory proposals could be suggested by initiative of the people as well as by the President and Congress; if international commissioners carefully discussed and adjusted differences, subject to a referendum, either compulsory or on petition of the common people in each disputing country, instead of being subject to approval or rejection by a hot-headed Congress, that sees in war perhaps a chance for glory, profit, conquest, or political capital; if an appeal from the government to the people were possible in every case of war, except where immediate action in self-defence were necessary—in short, if the final decision lay with the *people* on both sides of the line, wars would be few and far between. If the good Czar wants to bring about the disarmament of Europe, he cannot do better than work for the Initiative and Referendum. So long as he works with the governments he is dealing with men whose power and pride and interests of every sort are largely bound up with the military; but give full power to the common people and war would become a lost art in the civilized world.



## THE PRACTICAL DETAILS.

There are several methods of providing for the proposal of measures by the people, and the reference of enactments to them for approval or rejection. The most effective means of securing full rights of initiative and referendum is a constitutional amendment. If the provision is only a statute the legislature may repeal it at any time when they have a law on hand which they do not wish to submit to the people. A statute right, however, may do much good, and, if long enjoyed, will be certain to develop a sentiment that will not only make its permanent repeal impossible, but will inevitably lead to constitutional guaranty. The following analysis may serve to suggest some of the leading points that should be covered by a Direct Legislation amendment or statute. Provisions amounting to a new method of amending the constitution or involving any changes therein would of course be invalid in a mere statute—the legislature cannot change the constitution; such provisions could only be effective in a constitutional amendment, and if incorporated in a statute might render it void in toto.

## ANALYSIS OF DIRECT LEGISLATION LAW OR AMENDMENT.

*The percentages refer to the vote at the last preceding election.*

**Initiative.**—Five per cent. of the voters of a city (or state) may propose an ordinance (or law) or amendment to the charter (or constitution) by imperative petition (containing the proposed measure) filed with the city clerk (or Secretary of State).

Said official shall publish such proposal at once and submit it to the people at the next city (or state) election occurring 20 (or 40) days after the said filing, unless it is adopted by the councils (or legislature) 50 (or 130) days before said election, in which case it shall be subject to the referendum.

A special election may be ordered by a 15 per cent. petition, or at the discretion of councils (or legislature) or of the mayor (or Governor).

**Referendum.**—All measures proposed by the people, and all enactments of councils (or legislature), except urgency measures, shall be subject to the referendum.

Five per cent. of the voters of a city (or state) may demand a referendum.<sup>1</sup>

The mayor (or Governor) or one-third of either council (or House) may order a referendum.

Urgency measures are those necessary for public health, peace or safety, passed by a two-thirds or three-fourths vote of councils (or legislature).

Other enactments shall be in abeyance for 30 (or 90) days after passage by councils (or legislature) and publication. If within that time a referendum petition is filed with the city clerk (or Secretary of State), the said official shall submit such measure to the people for final decision at the next city (or state) election, as above.

A special election may be ordered as above. (See Initiative.)

If no referendum petition is filed within said time, the measure takes effect under the same conditions as at present.

Franchise and monopoly grants and contracts with monopolies *must* be submitted to the people.

A measure rejected by the people cannot be again proposed the same year by less than 20 per cent. of the voters, nor re-enacted in councils (or legislature) except by a two-thirds vote, and in such case *must* go to the polls, whether there is a referendum petition or not.

A measure once approved by the people cannot be altered or repealed *without a referendum*.

When a law is declared unconstitutional, the Governor or the legislature may, and on a 15 per cent. petition shall submit the law to the people, and if approved by them it shall thereafter be law, notwithstanding said decision. (This amounts to a new means of amending the constitution.)

How far the referendum or reference to the people should be made obligatory is a very important question. The direct citizen vote is already obligatory in respect to constitutional amendments and the affairs of towns under the New England

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<sup>1</sup> Five per cent. is by some considered too large when applied to populous cities or states, as 5 per cent. of a very large voting population would place too great a difficulty in the way. It is proposed that a definite number be fixed, as 3,000 for a city or 10,000 for a state, or 5 per cent. when such definite numbers would exceed 5 per cent. The following is a good wording: "Three thousand voters, or a number equal to 5 per cent. of the total of votes cast at the last preceding election, if such percentage is less than 3,000." Or in case of a state "Ten thousand voters or a number equal to 5 per cent. of the total votes cast at the last preceding election, if such percentage yields a number less than 10,000." This option would require 5 per cent. unless such 5 per cent. would amount to more than 3,000 in case of a city, or 10,000 in case of a state. Whichever was least in any case, the 5 per cent. or the fixed number, would govern that case. Five per cent. of a small voting population would be easy to secure; in a large voting population the above mentioned option would be desirable.

system; and in a number of states a citizen vote is necessary to certain franchise grants, public purchases, bond issues, etc. In several of the Swiss cantons the law exempts urgency measures, leaves transactions that do not go beyond established routine to take effect if not objected to, and in all other cases requires the submission of each and every legislative act to the people as a matter of course and without any referendum petition.

Matters of routine may be defined as including appropriations, purchases, contracts and other acts that are substantially the same as in the preceding year. It might be well to put routine measures with urgency measures as exempt even from the optional referendum, leaving them subject to control thru the initiative. But however that may be, they ought clearly to be exempt from the obligatory referendum.

It seems probable that ultimately the obligatory referendum will be found the better form for several reasons:

1. It saves the trouble and expense of a double appeal to the people, once on the petition and once on the ballot. It has been found in Switzerland that the optional referendum sometimes remains useless because the voters, wishing to invoke its aid, cannot afford to bear the cost, so the law to which they are opposed remains unchallenged and goes into effect without a verdict of the people. -

2. The obligatory referendum does not play informer—does not require the disclosure of opinions, but affords the voters all the protection of the secret ballot. The optional referendum puts the petition signers on record and makes their opinions known, therefore it does not close the door so completely as the obligatory referendum to improper legislation that is supported by powerful employers and corporations against whose influence employees and others dare not act openly for fear of discharge, or loss of business, blacklist, boycott, etc.

It is often the case that citizens who oppose an unjust enactment and would vote against it at the polls, are, nevertheless, afraid to record an adverse opinion by open petition, and others, tho not exactly afraid to avow themselves, yet deem

it wisest for business or social reasons to keep their ideas to themselves.

3. The mere *inertia* of the people permits some things to pass that are objectionable, but not sufficiently so to awaken an energetic protest; so that designing legislators are encouraged to act on the possibility that bad laws adroitly worded may go thru unnoted by the people, or at least escape the requisite petition till the 30 or 90 days are up. The Optional Plan leaves a somewhat wider way to improper laws than the other, and holds out a slight hope to corruption; an exceedingly small one, of course, for the chance of success is a desperate one for an evil law with the Referendum in either form, but hope enuf perhaps to invite the attempt sometimes when it would not be thought of under the Obligatory System, by which the chance of success is reduced almost to absolute zero.

In all probability, however, notwithstanding the ultimate advantages of the obligatory plan, it will be best to begin with the optional referendum (except as to street franchises, and dealings with corporations and monopolies), the reasons being: (1) That during the transition from present methods to Direct Legislation there would be a volume of business that might prove burdensome under the obligatory system, and (2) That the optional form provides an intermediate step, permits a more gradual change to the new system and allows the people time to become more accustomed to the use of Direct Legislation before they enter upon the full privileges and responsibilities of the obligatory referendum.

Either the Optional or the Obligatory Referendum, together with the initiative, will make our legislative system consistent thruout, and bring all parts of it into harmony with the fundamental principles of liberty, self-government, democracy and popular sovereignty, which it claims to regard as the essential principles of true government, and to which it professes an earnest desire to conform. The right to propose or initiate a city or state measure is like the right of a citizen in town-meeting to make a motion upon any matter of business to be acted upon by the meeting, and the right

of ten citizens to have any subject they choose inserted in the warrant for action by the town; the right to demand a vote at the polls on a given law, corresponds to the right of a citizen in town-meeting to call for the ayes or noes; and the obligatory referendum corresponds to the rule which requires the plans and proposals of town officers and committees, and all motions made at town-meetings to be put to a vote of all the citizens who care to express themselves, whether a vote is asked for or not.

It must be remembered that the Referendum, in its strict sense, is merely *preventive*, whereas the Initiative and Referendum together give the people the means of *construction* as well as the means of *prevention*.

The word Referendum, however, is frequently used as synonymous with Direct Legislation, including both the proposal of laws by the voters and the reference of laws to them.

## REASONS FOR THE REFERENDUM.

### THE DOORWAY OF REFORM.

1. *It is the key to progress. It will open the door to all other reforms.* It is not the people who defeat reform. The people want honest government, civil service reform and just taxation. They vote overwhelmingly against monopoly rule and for public ownership of street franchises and public utilities almost every time they have the opportunity. It is the power of money and corporate influence and official interest that checkmates progress.<sup>1</sup> Miles of petitions have gone in to Congress for a postal telegraph. By the million our people have expressed the wish for such an institution, and Hon. John Wanamaker says in his very able argument on the subject, that the Western Union is the only visible opponent of the movement. It is enuf, however, for it has more weight with Congress where its interests are touched than all the 75 millions of "common" people in the country. But if those

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<sup>1</sup> In Switzerland direct legislation has defeated the monopolies, abolished the lobby, destroyed political corruption, undermined partisanship, and established proportional representation, progressive taxation, home-rule in local government, and public ownership and control of railroads, telegraphs, telephone and express service. (See below under Experience.)

"common" people made the law, the Western Union would weigh several tons less, and the nation would own the telegraph in a very short time. Postal savings banks, progressive income and inheritance taxes and popular election of U. S. Senators would probably be adopted by vast majorities if submitted separately to popular vote, and perhaps a referendum might even give the Filipinos their freedom. Freehold charter laws, civil service acts, proportional representation, efficient corrupt practices acts, local option and state dispensary systems, etc., would be adopted in many States, and city after city would get its government and its streets out of the hands of politicians and monopolists. Philadelphia would not have been robbed of her gas works if she had had the referendum, but would have improved them and kept them in good condition for the serving of the people. Her water supply would have been enlarged and purified instead of being left to distribute filth and disease in order that councils might have a plausible excuse to sell the works some day to a syndicate of greedy capitalists. Boston might be lighting her public buildings and streets and supplying electricity to her citizens at half the private company's charges if the people had had the referendum to keep the aldermen and the legislature from killing all measures of relief. Boston, New York and Philadelphia would not have been worsted in their battles with the street railways. Detroit and Chicago could have won their victories with a fraction of the cost in time and money that has been required to fight the league of railway corporations and legislative authorities.

Hundreds of instances might be named in which councils, legislatures and congresses have persistently defeated the well-known will of the people. It is not sufficient now to educate the people to a new idea, or even to elect representatives on the promise to carry it into execution; you have also to fight the power of money and corruption in the legislature that will steal away or put to sleep the ardor of your legislators.

How important it is that progress should rest with the people free of hindrance from their rulers is clearly brought out in this fine passage from the great historian, Buckle:

"No great political improvement, no great reform, either legislative or executive, has ever been originated in any country by its rulers. The first suggesters of such steps have invariably been bold and able thinkers, who discern the abuse and denounce it and point out how it is to be remedied. But long after this is done, even the most enlightened governments continue to uphold the abuse and reject the remedy."

Wendell Phillips said:

"No reform, moral or intellectual, ever came from the upper classes of society. Each and all came from the protest of the martyr and the victim. The emancipation of the working people must be achieved by the working people themselves."

The Referendum is the key that will unlock the door to every onward movement. It will give us new reforms as fast as the people want them, without the necessity of waiting till the millionaires and politicians are ready for the curtain to go up. In this great fact lies the tremendous and immediate importance of the Referendum, altho it is by no means the only irresistible reason for favoring the movement.

Direct Legislation will give the people the power of voluntary movement; it will bring the public mind into connection with the motor muscles of the body politic; it will gear the power of public sentiment directly and effectively to the machinery of legislation, with no slipping belts, switched off currents or broken circuits.

At present the pocket nerve and the corporation ganglion are frequently able to paralyze the progressive muscles and the civic conscience and control the body politic, and the party ganglia compel it to remain inactive, or else go to enormous labor and perform a large number of actions that are against its wish in order to accomplish a few things it desires—as tho a man were obliged to lift a fifty or hundred pound spoon to his lips with each sip of soup and endure the pricks of several pins and needles or sit down on a tack with each mouthful of bread or fragment of beef, the bill of fare being written with those conditions to be accepted or rejected as a whole, like the conglomerate platforms of our parties.

The separation of measures accompanying Direct Legislation is another thing that makes it par excellence the friend

of progress. Each reform will receive as a rule the full support of all who believe in it without suffering from the alienation and subtraction of the votes of citizens who *favor it* but *oppose some other measure* with which it may be linked in the platform, or object to the *party* in whose platform the reform is suggested or dislike the *candidate* whose name is tied to the movement and whose election is the only means of securing its success.

#### PURE GOVERNMENT.

2. *Direct Legislation will tend to the purification of politics and the elevation of government.* It is not the people who put up jobs on themselves, but corrupt influences in our legislative bodies; the Referendum will kill the corrupt lobby and close the doors against fraudulent legislation. It will no longer pay to buy a franchise from the aldermen, because the aldermen cannot settle the matter; the people have the final decision, and they are so many that it might cost more to buy their votes for the franchise than the privilege is worth. It is comparatively easy for a wealthy briber to put his bids high enuf to overcome the conscience or other resistance of a dozen councilmen. It is quite a different matter to overcome the consciences or other resistance of ten thousand or a hundred thousand citizens. *Legislative bribery derives its power from the CONCENTRATION OF TEMPTATION resulting from the power of a few legislators to take FINAL action.*

The Broadway Surface Railway Company paid aldermen \$20,000 apiece for the Broadway franchise steal, which cost the company in bribes and lobby expenses about \$500,000; but how much would it have cost to buy up a referendum vote in the city?

The Philadelphia councils submitted the question of bonding the city for \$12,200,000, to be used for a variety of public improvements (November, 1897), but they refused to submit to the people the question of leasing the city's gas works to the United Gas Improvement Company (which already



owns the gas works in over 30 cities), altho the people demanded a referendum with indignant vehemence. The *Inquirer* had a referendum vote taken in the Twenty-eighth ward, with ballot boxes and regular printed ballots, just before the lease, and the vote was 32 in favor and 2583 against it—81 to 1 against the action of the councils. There is no doubt that a vote in other parts of the city would have gone overwhelmingly against the councils. "The Progressive Age," a leading organ of the gas interests, in its issue of January 15, 1898, admitted that the people would have voted against a lease, and that "it was artificial pressure which effected the result." Commenting on this case "City and State," of Philadelphia, said: "The refusal to permit the owners of a great property (which is valued approximately at \$30,000,000) to say whether they shall part with it or keep it is worthy of the severest condemnation." "Bribed by the rich to rob the poor," said the Hon. Wayne MacVeagh. The poor thieves in legislature and council bought by the rich thieves in the corporations, to give away the property of a million people that has been entrusted in their care.

Such cases show with tremendous emphasis that it will not do to leave the referendum option with the legislators. They submit questions that are immaterial to them or in respect to which they wish to act honestly; but they never submit a franchise steal to the people. When they are acting from honest motives they often find the referendum very helpful in coming to a wise and just conclusion; but when they are acting from corrupt and selfish motives they have no use for the referendum.

The reader will remember that in examining the facts relating to the use of the Referendum in the United States, we found that the people have voted down all propositions that were suspected of being accessory to any job, and the strenuous opposition of the corruptionists to the extension of the Referendum shows that they appreciate its power for purity. They know very well that corporation frauds could not go on, and that valuable gas, electric light and street railway franchises would no longer be given to lobbying corporations if we had the Referendum.

When the Reading Road was asking for special terminal privileges in Philadelphia at Twelfth and Market streets, the company put \$5,000 at the service of each member of the select council, and a noted political boss, who was in the council at the time and had large influence there, told a prominent lawyer of my acquaintance that there were only three councilmen who refused the money, and that he (the boss) was not one of the three.

I am told that in Massachusetts legislators at the state house can be bought for \$250 a vote on important measures. It is said that in Washington State ordinary legislation can be purchased at \$200 a head. A few years ago a member of the Albany legislature told an intimate friend of mine that two-thirds of the legislature had taken bribes, and it was doubtful if many of the other third would resist in case of strong pressure. I am told by Peoples' Party men that, in the Legislatures of some Western States, Populist members can be bought for \$20 a vote and other members for \$10 a vote. A member of the Michigan legislature resigned because he could not put up with the continual strain on his morals, and his successor told him that he made \$16,000 out of his first session on a salary of \$300 a session.

A legislator may be subjected to successful pressure by street railways, gas and electric light companies, the railroads, the oil-trust, or the coal combine, but the *citizens* are too numerous, too much interested in their own pocket-books and too wide awake to their own welfare to be wheedled or bribed or threatened into giving away their property, or endowing big corporations with privileges and powers to be used to the disadvantage and oppression of the donors. As Professor Bryce says, "The legislators can be 'got at;' the people cannot."

Prof. Bemis tells of a corporation voting \$100,000 to buy the Chicago council as calmly as it would vote to buy a new building, and says that, according to a reliable attorney, such a proceeding is an ordinary thing. Under the Referendum such proceedings would not take place because they would be of no use. The Referendum destroys the power of legislators to legislate for personal ends.

The lobby exists mainly to get from the legislature private advantages which the people would never grant, because such advantages are against the interests of the people. You may find it quite easy to offer ten men or a hundred men enuf to overcome their interest in good government according to their perverted standards of value, but you would find it very difficult and very costly to buy half a city full of men to vote against the public interests. In a state or national vote the lobbyists' problem would be more gigantic still. Imagine Oakes Ames travelling all over the United States bribing men with stock to vote for a big Pacific steal! It would take more stock than the road would ever own, even if it had as much water in its capitalization as lies in the broad bed of the Pacific Ocean. If a million citizens owning a city or state entrust their business to 100 agents, and you wish to acquire a million dollar franchise for nothing, or obtain a contract that will give you a million more than the fair value of the work you do under it, you may be able to persuade 51 of the agents to vote the contract or franchise to you, but it would be a very different undertaking to persuade 500,000 people to vote you the booty. You could give each agent of the 51 an "inducement" of five to ten thousand dollars and still have one-half or three-fourths of a million of the plunder left for yourself, but to buy the people at the same rates would cost you two and a half to five billions, or several thousand times as much as the whole steal would come to; and instead of being a gainer you would be some billions out of pocket. In order to buy the people and have half the plunder left you would have to reduce your "commissions" from \$10,000 apiece to \$1 a head. *The Referendum would infinitely dilute the power of bribery* in procuring legislation, and correspondingly weaken the motive for it. It is one thing to say to a few agents, "Help me steal a fortune from the people and I will give you a big slice of it," and quite another thing to say to the people, "Permit me to take a fortune from *yourselves* and I will give back a few cents of it to each of you."

The Referendum will be the death of the lobby. It will be impracticable to lobby the people because of their number.

And it will be useless to lobby the legislators for they cannot deliver the goods.<sup>1</sup>

No doubt persuasion will still be used with legislators as the first and easiest method of initiating legislation, but the lack of finality in the action of legislative bodies will take away its commercial value, and the Lobby or "Third House" as it exists to-day will dissolve. Log-rolling and minority obstruction will also lose their power, and dishonest men will be much less likely to buy legislative positions and other offices, because they cannot make them pay. Where would Tweed have been with the referendum in full play? Where would Quay be now if the people had the referendum on the United States Senatorship?

*Blackmailing* will be destroyed as well as the corrupting power of the lobby. The Referendum works both ways; it

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<sup>1</sup> Mr. S. E. Moffett says in his *Suggestions on Government*: "That every man has his price is too hard a saying; but that the great majority of men have their price is the simple truth. When votes are quoted at \$2 apiece from 5 to 10 per cent. of the voters of a state can be bought. Ten dollars apiece would buy, perhaps, 20 per cent.; \$100 apiece would buy 50 per cent, and if the price was raised to \$100,000 each, it is doubtful whether one voter out of twenty in any state of the Union could resist the temptation. Now, it often happens that the enactment or defeat of certain legislation is important enuf to rich corporations to make it worth their while to offer \$100,000 each, if necessary, for the assistance of a few members of Congress or of a State Legislature; but it would be impossible for any corporation to offer \$100 apiece to a majority of the voters of the United States; and practically impossible to make such an offer to the majority of the voters of an average state.

"There are other ways, too, in which the private interests of legislators are made to influence their public action. The Congressional silver pool, at the time of the passage of the Sherman law of 1890, and the Senatorial speculation in sugar stock during the manipulation of the Wilson tariff bill in the Finance Committee, became national scandals. Every great railroad whose interests are affected by legislation has its attorneys in Congress or in the State Legislatures. The presidents and chief stockholders of important corporations have held seats in the Senate and openly spoken and voted in behalf of their private interests without betraying a thought of impropriety.

"It is said that the true remedy for these evils is to elect good men to office. The advocates of this happy and original idea will have everything their own way when they show us two things: First, how to insure the election of good men; and, second, how to *keep* them good after they are elected. It is useless to expect representatives to be very much better than the people they represent. It is as much as we can reasonably look for if they are no worse. A system of government whose satisfactory operation requires the continual election of archangels to office is not a practicable working system. To have a really stable fabric of government we must base it upon enlightened self-interest. As Mill puts it:

"The ideally perfect constitution of a public office is that in which the interest of the functionary is entirely coincident with his duty."

"Now, the self-interest of the average man, acting as one of the mass of voters, lies in the direction of good and honest government. It is worth more to him to have cheap sugar, pure water and safe, rapid, cheap and comfortable transportation than to accept 50 cents from the sugar trust, a dollar from a water company and \$2 from a railroad, to be cheated, poisoned, jostled and belated, with the prospects of being eventually flattened out or burned alive in a wreck. But the average man in the place of a legislator would certainly succumb to the same influences that corrupt the politician."

keeps the corporations from using the legislature for their private gain, and it also keeps the legislators from blackmailing the corporations by introducing bills injurious to them, so that they will offer large sums to have the bills quashed—a shameful practice prevailing to a large extent in some of our legislative bodies.

The unguarded representative system, or delegation of uncontrolled law making power to a small body of legislators, has utterly failed to check class legislation, or the growth of monopoly and corruption. On the contrary, these evils have increased in city and state where the delegate system has control, whereas in town affairs and constitution making, and city business so far as referred to and controlled by the people, the said evils are comparatively unknown. This contrast vividly illustrates the power for purity that Direct Legislation possesses.

As we shall see below, the force of partisanship will diminish by the referendum. Party success will no longer mean power to mould the laws of a city or state for one or more years. And the intensity of party feeling will diminish as the value of the prize to be won is lessened. The weakening of partisanship will react on the executive department, and the spoils system will have less hold on the government even before civil service regulations are thoroly formed and enforced.

As we have seen, the obligatory referendum would be most effective in checking corruption; but even the optional referendum will make corrupt legislation a dangerous and unprofitable thing. The mere fact that the right of appeal to the people exists within the reach of a reasonable percentage of voters will purify legislation at its source. (See Professor Gunton's remarks above quoted.)

The Initiative and Referendum will destroy the private monopoly of law making. The public ownership of monopolies will destroy the chief corruption fund. Civil service reform and effective corrupt practices acts will also make for purity. Proper restriction of immigration and thoro educational measures can hardly fail to follow close upon the referendum.

And the force of these six measures will gradually eliminate corruption from government. As politics grow purer the rascals will leave the field and nobler men will enter it, thus hastening the upward movement.

3. *Demagoguery and the influence of employers over the votes of their employees will be diminished factors in elections.* When the question is voting an office to A or to B, one as good as the other for all the voter knows, a two-dollar bill or the wish of his employer may seem to the voter to be worth more than the problematical difference between the two candidates, for whatever their platforms and promises there is little possibility of telling what they will do when elected.<sup>1</sup> But when the question comes directly home to the self-interest of the voter, on a bill to give away public property, or franchises, or make an extravagant contract, etc., the voter will use the protection of the secret ballot and record his opinion, regardless of two-dollar bills or the wishes of employers.

The Bay State Gas Company of Boston found no difficulty in managing the councils, but if the public ownership of gas works were put to a vote of the people, the Bay State would be almost a cipher in the ballot. If the municipalization of the street car lines were put to vote I believe that even the employees of the roads would neglect to obey the voting orders from headquarters, and cast their ballots almost to a man for the change. Even the ignorant voter will be rescued by the Referendum to some extent. The demagogue and politician will lose a large part of their power to prejudice and confuse when the issue is a single, clear-cut question of money, property or public policy, instead of the present entanglement of measures and men tossed together in a confused heap for

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<sup>1</sup> Carlyle says: "What is it to the ragged, grimy freeman of a 10-pound franchise borough, whether Aristides Rigmorole, Esq., of the Destructive party, or the Hon. Alcides Dollittle, of the Conservative party, be sent to Parliament; much more, whether the two-thousandth part of them be sent, for that is the amount of his faculty in it. Destructive or Conservative, what will either of them destroy or conserve of vital moment to this freeman? Has he found either of them care, at bottom, a six-pence for him or his interests, or those of his class or of his cause, or of any class or cause that is of much value to God or to man? Rigmorole and Dollittle have alike cared for themselves hitherto, and for their own clique and self-conceited crochets, their greasy, dishonest interests of pudding or windy, dishonest interests of praise, and not very perceptibly for any other interest whatever."

the express purpose, one might think, of affording demagogues their golden opportunity to prejudice men against the whole "heap" by centering attention upon some objectionable feature of it, and ignoring the good features or lying about them, or to prejudice men in favor of the whole by reversing the process of deception.

4. *The power of rings and bosses will be greatly reduced by the Referendum*; directly so far as concerns the large portion of their power, which depends on controlling legislation; indirectly so far as concerns their administrative power. Nothing will do more than the Referendum for the cause of civil service reform, and the awakening of a strong interest in politics and the ballot on the part of our best people, and these things will quickly abolish the boss and the ring.

Proportional representation, majority elections and stringent corrupt practices acts will be likely to be proposed and adopted under the initiative and referendum. And further relief may be afforded by the Imperative Mandate or Recall—the removal of an officer by initiative and referendum on a two-thirds vote—a plan which would operate in case of any executive, judicial, or other officer appointed for a certain district or elected by a majority vote in a given district, but would not work with officers elected under the plurality rule or proportional representation and the secret ballot.

All these things, together with the fact that the purification of legislation, will take away the larger part of the profits of bossdom, make it likely that the Platts and Crokers, Quays and Hannas will find their empires undermined by the Referendum and its natural sequences.

5. *Partisanship will sink into comparative insignificance* in the government of the country. At present about all the guide the average voter has is the party to which he belongs. He knows little or nothing of the candidates on either side. There are only a few things much talked of in the campaign, so far as his party papers and speakers bring him information, and he thinks his party is right on these things, or he votes with it because his father did or his employer, and because there is no particular reason appealing to his interests to pre-

vent him from doing so. But when specific measures are submitted separately to the people in the precise form in which they are to take effect, voting will assume a definiteness heretofore unknown, and the citizens will vote on each measure as they believe their interests require, and will not be likely to rob themselves or disregard what they believe to be for their benefit, merely to please a party machine. Experience with the Referendum plan in town affairs, voting on city franchises and making constitutions, abundantly proves that the voters do not keep to party lines when it comes to opening streets, building school houses, making appropriations and acting on any matters of business, the drift of which is clearly brought home to them. Not only will the interest of the voter lead him away from partisanship, but the outside pressure tending to make him a partisan will be much less, since the larger part of the motives for that pressure—the legislative and administrative spoils to be gained by party success—will disappear, the first as a direct consequence of the Referendum, the second as an indirect consequence through the favored growth of civil service reform.

#### SIMPLIFICATION.

6. *The Referendum will simplify as well as purify ELECTIONS.* It is much easier to vote upon measures than men. A man is a cyclopedia of measures bound in mystery; even his character is a puzzle, for the main business of opposing politicians is to fling mud at each other's candidates until it is impossible to tell how much is mud and how much is man, or some other animal.

After throwing all the mud they can dig up or manufacture, the next duty of the politicians is to pile up a lot of high-sounding words into sentences that will come as near as possible to covering any conceivable thing that a council, legislature or congress may do, and call it a platform, to remind us of its likeness to the board contraption at the business end of a summer convention, used for the speakers to stand on during the rumpus and afterward cut up for kindling.



Instead of a tangled mass of ignorance and vituperation, the Referendum will bring to the voters a series of clear-cut measures, each to be decided on its own individual merits. Shall we have proportional representation? Shall women vote on the same terms as men? Shall street car companies be required to put effective fenders and vestibules on the trolley cars? Shall towns and cities have the right to build or buy, own and operate municipal gas and electric light works if they wish? Shall they own and operate street railways? Shall they make their own charters? These are questions easily understood and capable of decision without the perplexing admixture of personal considerations or inquiries as to whether a Democratic candidate for office did not behave with becoming modesty in early life, or loves liquor too well, or whether the tariff ought to be higher, or silver freer, or whether the hard times or the good times came in under Republican or Democratic administration.

That the referendum would *disentangle issues* is one of its most weighty claims to our attention. At present we have to put up with the splinters in the bread, the hairs in the butter and the salt in the ice cream or go without our food. The party cooks stand smiling and bowing before you, urging their bills of fare on which you can plainly read such questions as these: "Will you eat a hash of chicken and dog meat? or will you have beef and rat tail in croquettes?" "Will you drink coffee steeped in vinegar or chocolate flavored with gall?" The party tailors fix up three or four suits for you to choose from. "Will you wear black clothes with yellow stripes and a very tight belt? or a grey suit with bright green shirt and corn creating shoes? or a silk hat, red overalls and a green necktie?"

The exceeding complexity of the judgments required of our voters and the impossibility of satisfactory voting under a system characterized by *Mixture of Issues*, is well brought out by Mr. Moffett

To put the "party policy" idea to the test, let us suppose that I desire the reform of the tariff, and object to the further coinage of silver, the intensity of my wish for tariff reform being represented

by 100, and that of my opposition to silver legislation being represented by 99. Suppose that my party passes a tariff bill satisfactory to me, and also passes a silver coinage bill. I am called upon to render judgment upon this "policy" at the next election. I do violence to my convictions on the silver question for the sake of my preponderating convictions on the tariff; but my dissatisfaction (99) on one question must be deducted from my satisfaction (100) on the other, leaving me a net satisfaction of only 1 instead of the 199, which I could have had if I had been allowed to vote on each measure by itself.

But this is putting the case too favorably for the "policy" theory. In this example the voter does get some opportunity, however slight, to move in the direction of his preponderating desires. But the situation is not often so simple. Suppose, for instance, that my ideas of a national "policy," quantitatively expressed, run like this:

Tariff reform.....	100
Opposition to silver coinage.....	99
Economy in government.....	80
Annexation of Hawaii.....	50
Extension of civil service laws.....	100
Strong navy.....	40

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Suppose that my party meets my wishes on tariff reform and economy (180), and the other party on silver, Hawaii and the navy (189), while neither takes a satisfactory position on the civil service (100). Then, if I vote for my party, I vote for a policy of which I approve of only 180 parts and disapprove of 289; and if I vote for the other I vote for a policy of which I approve of 189 parts and disapprove of 280. Thus my net satisfaction is 109 less than nothing in one case and 91 less than nothing in the other. And, moreover, the situation is almost certain to be still further complicated by the nomination of candidates whom I do not consider fit to hold office, but for whom I must vote as *the only way of exerting an influence on the choice of any policy at all*. If the people were allowed to vote on measures as well as on men, I could exert my full power at the polls in favor of the whole 469 points of the policy I desired to see carried out, and, in addition, I could vote for the candidate I thought best qualified for legislative business, regardless of his opinions on disputed political issues.

The American theory of representative government is that "the members of a lawmaking body should be true representatives of the people, endeavoring, to the best of their ability, to carry out the popular will, and held accountable by their constituents for the fidelity with which they execute their trust." This idea is clearly stated by Mr. Woodrow Wilson:

"It should be desired that parties should act in distinct organizations, in accordance with avowed principles, under easily recognized leaders, in order that the voters might be able to declare by

their ballots not only their condemnation of any past policy by withdrawing all support from the party responsible for it, but also and particularly their will as to the future administration of the government by bringing into power a party pledged to the adoption of an acceptable policy."

This admits the principle of the referendum, the right of the people to determine the law, but the method proposed is unworkable. The trouble lies with the fact that the harm is often largely or wholly done before the people get a chance to condemn, and with the false assumption that a "*party policy*" is a *clearly defined unit*, which may be unmistakably condemned or approved by the voters. The fact that it is nothing of the kind is one that lies on the very surface of our history. We have never had a national election whose returns made it possible to determine just what policy, in the sense of a programme of legislation, the people wanted, altho there have been very few elections in which the popular will on some one overshadowing issue has not been made tolerably clear. It was reasonably plain in 1864, for instance, that the Northern people favored the prosecution of the war, but the election threw no light on their ideas upon reconstruction, emancipation, negro suffrage, or the finances.

The theory of representation stated above is based on true feeling, but it does not work out in practice, because of the mixture of issues, and because the people have no *immediate* check upon the delegates; even if the people voted on each issue separately, it would do them little good to condemn, long after the wrongs, men who gave away Broadway franchises or leased Philadelphia gas works. It will not bring back the horse to pass a vote of censure on the hostler a year or two after the horse was stolen.

7. *The Referendum will simplify and dignify the law.*

A law that is to be submitted to the people with any great hope of its adoption must be reduced to its lowest terms,<sup>1</sup> and we shall stand a chance of avoiding in future the piling up of massive tomes of useless enactments which the legislature itself knows little or nothing about a month or two after their passage, even if understood at the time, and which became law to buttress some private interest or to fill up the time of our legislators, who, being elected to make the state's laws,

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<sup>1</sup> See above statement of facts as to the use of the Referendum where it appears that people are apt to veto on general principles, a complex and ambiguous law which cannot be clearly comprehended by them—a most beneficent tendency, for surely a people ought not to be expected to obey a body of laws they cannot understand.

seem to measure the fulfillment of their duty by the number of bills they enact. David Dudley Field estimated in 1871 that if the enacting of local laws were left to the communities to which they apply, the work of the New York legislature would be reduced 95 per cent. Eltwed Pomeroy says that in 1892 alone New Jersey passed 600 laws, many a one of which was longer than the whole Justinian Code, that governed the Roman world for centuries. These New Jersey laws also have been examined, and nearly the whole of them found to be (1) local or special laws, or (2) laws that fall under a principle already established, so that they are mere senseless repetitions, or (3) acts in private or corporate interests that ought never to have been passed by any body, local or state. In later years the legislature seemed to get tired sooner than in '90, and at one session passed only about 400 laws, but they have kept up their reputation for useless enactments pretty well, altho some good laws were passed.

Under the referendum the yearly output of New Jersey's law factory would probably be reduced from 400 or 600 to 20 or 30—such at least is the result indicated by the experience of Switzerland,<sup>1</sup> and such is the reason of the case upon

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<sup>1</sup> For the last twenty years the cantons of Berne and Zurich, where they have the obligatory referendum, have passed an average of 4 or 5 laws a year, and these laws are short, simple and easily understood. In a recent Swiss national legislative session of the usual activity 65 measures were introduced and 24 passed. The New York legislature about the same time passed 700 laws, and the measures introduced into Congress reached the enormous total of 24,000. It is said that Switzerland has less than one-seventh as many lawyers as we have in proportion to population.

In 1895 Governor Griggs, of New Jersey, said: "I have absolute faith in the judgment of the people when intelligently and deliberately formed."

And in his inaugural he used the following powerful language in expressing his lack of faith in the virtues of our present prolific system of legislation:

"I consider it most important that you should at once restrict the volume of legislation. The mass of statute law has now become so immense as to be almost beyond the power of the legal mind to acquire it or the judicial mind to interpret it. It was intended by the amendments to the constitution adopted in 1875 to decrease the quantity of statute law by the abolition of special legislation upon several subjects, notably, the government of counties and municipal corporations. Such decrease was for several years effected. But gradually, aided by experience and a sharpened ingenuity, the draughtsmen of statutes came to know how to draw up laws which, while possessing the form of generality required by the constitution, *had all the substance of special application* to the desired locality without becoming fastened to any unwilling municipality. \* \* \* \* \* A striking instance of manifold legislation exists in the laws relating to boros. These forms of local government did not exist until recently. They were all created under so-called general laws. The spirit and letter of the constitution required that they should be governed by a uniform system. Yet we find three different general acts now in force regulating the creation and government of boros. At each session of the Legislature numerous amendments to each of the three systems are passed, until this one title in the General Statutes covers 111 pages. So variant, inconsistent and confused

an analysis of the laws now enacted. The principles of the common law, with a few simple modifications, are entirely sufficient for any state. There would be more justice and less litigation by far, if courts were left free to apply broad principles instead of being compelled to give attention to the rigid language of narrow-minded, short-sighted legislators, and if men were able to carry the law in their consciences instead of requiring a two-horse team to convey it and a line of lawyers and judges from the justice court to the supreme court of the United States to explain it to him, and then be in danger that they'll turn round next day and declare it is the other way. It is one of the most ridiculous things in modern civilization that every man is presumed to know the law, while everybody knows that nobody knows it, not even the judges of the Supreme Court. It is impossible to keep track of one thousandth part of the statutes of state and nation; the legislators don't know much about them by the time the ink is dry, except, perhaps, the bills they drew themselves, and I have known legislators who did not know much about their own bills even while advocating them. But if some poor fellow in blissful ignorance happens to run up against some words in a musty volume in the law library, and his enemy's lawyer happens to find those words, the poor innocent has to suffer for not sitting up nights to learn the statutes. The fact

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are these acts that no legal advisor or judicial interpreter can safely say what the law is on many subjects relating to boros.

"For some years past the annual volume of the laws has been growing in thickness. As an example, the most recent, that of 1895, contains 106 different acts relating to cities, 43 relating to boros, 33 relating to townships, 13 relating to villages. It cannot be that any such number are necessary.

"Take some other subjects. There are nine separate amendments to the school law, seven different acts on the subject of sidewalks, eight relating to the State House, five relating to swamps and marshes. Similar variety and multiplicity will be found in any volume of annual statutes for the last six or seven years.

"When we consider that the power of legislation is the greatest that can be exercised by any human agency, that every law changes the rights and modifies the duties of a greater or less number of citizens, it is proper to inquire whether proposed laws are sufficiently considered before they are adopted. The same tendency to multitudinous and slipshod legislation prevails in other states of the Union, and has attracted the attention of many thoughtful persons.

"Besides the *uncertainty and confusion* that ensues from the existence of so many separate statutes, the easy change of existing law tends to create popular disrespect for the sanctity of the law. What can be so readily made and so easily altered can be fairly considered as of small importance.

"The General Statutes of the State now in press will comprise three large volumes of over 1,000 pages each. \* \* \* Unless we confess that our legislative system is a failure, we must find a method of remedying this excess." (See Appendix II T.)

is that our legislatures spend most of their time in establishing stumbling blocks in the paths of justice and the people, and the Referendum will not be long in use before the great mass of statute law will be replaced by a few simple provisions impartial to all, in thoro accord with justice and easy to learn.

Local legislation should be performed by counties and municipalities under general state laws, and private legislation should not be tolerated at all. Numerous bills that are now rushed thru, very often without discussion or understanding by the legislators, would never be introduced under the referendum, the certainty of a popular veto making them hopeless. I have even known lawyers to secure the introduction of a bill to change the law applicable to a case they had in hand so it would work in their favor. Such action is an invasion of the judicial field by the legislative power. Senator James Bradley, of New Jersey, believes this sort of thing to be quite prevalent. He says:

"The present mode of legislation is behind the age. I have become a sincere convert to the Referendum. The mass of bills presented was something to startle one. The provisions of one bill lapped on another, and I believe many an indolent lawyer found it easier to frame a bill covering just what points he needed in some case he had on hand than to exercise his brain in looking up the immense number of laws we have on every subject on our statute books. The looseness of legislation should grieve every good citizen of the state, and I hope the day is not far distant when the people will turn to the Referendum, and pass laws more general in their character and less of them."

The nation is deluged with laws, 13,000 new ones altogether in a single year sometimes, and the people know nothing of most of them till they see them in the newspapers, when it is a good while too late to stop them, and indeed not one per cent. of the people have time or interest or eyesight to go thru the wilderness of nonpareil nonsense and the muss of technicalities called laws.

Direct Legislation will stop a large part of the present law-making, turn over another large part to municipalities, and simplify what remains to the infinite relief of the people and the great lightening of the burden now resting upon our legislatures.

The over production of laws is a sign of a low grade, undeveloped legislative system. It is simply the natural fecundity of low organisms. A fish has multitudinous offspring at a single session, an elephant only one; but the quality is in inverse ratio to the quantity. The Referendum will lift our legislative system from the fish stage to the elephantine or the human plane.

Of course the *dignity* of the law will increase with the diminution in quantity and improvement in quality. A few examples will serve to illustrate the degree of dignity pertaining to some of our legislative proceedings under the present plan.

In New York a bill providing that every oyster stew must contain 13 oysters passed one house.

The Minnesota legislature passed a law forbidding the sale of any pie over 24 hours old at any lunch counter.

In Arkansas a bill was introduced providing that any bachelor over 30 must pay a tax of \$50 a year for each year he remains unmarried, unless he can bring an affidavit from a reputable woman stating that he has offered himself to her in marriage that year. They called it the "single tax." I do not know whether it passed or not.

Texas passed a resolution that her skies are bluer than those of Italy.

Iowa prohibited bloomers.

If I remember rightly, one House at Albany passed a law forbidding roosters to wear trousers on the public streets. Some man had exhibited a few chickens dressed in more humorous fashion than results from pulling out their feathers, and a grave and reverend member of the legislature, deeming the show unseemly, introduced a bill to regulate the clothing of chickens.

In New Jersey the proper length of clams is regulated by statute—they must be one inch long to escape the legislative prohibition. And New York prohibits lobsters less than six inches long.

In Indiana the Senate passed an act providing that no man shall be fined more than \$250 for kissing a woman. The bill was introduced by a man who kissed a woman without her consent. She had sued him, and as she was pretty he feared the jury would render a heavy verdict against him, and he introduced the said bill to head off the jury.

#### RESPECT FOR LAW.

8. *The Referendum will aid the enforcement of the law, for the people will grow up with it. It will be law because*

the people want it, and they will stand behind it, and see that it is carried into effect. Nothing is of more importance to a nation than a deep reverence for law; but reverence dies when legislation is dragged in the mire, and when the people regard the law-making bodies with dread and disgust.<sup>1</sup> Why is it that we revere our constitutions so deeply? It is because they are the work of the people and not of a band of politicians whose motives are open to question. The Referendum will fold the whole law in new confidence, endow it with the strength of public opinion, and give it new force for the maintenance of order and the accomplishment of progress.

#### ELEVATING POLITICS AND ATTRACTING GOOD MEN TO PUBLIC LIFE.

9. *The Referendum will elevate politics as a profession and bring the best men again into political life.* Government is intrinsically the noblest of all professions, for it includes and controls all others, as the captain of a ship holds the destiny of all on board. But when power is prostituted to evil ends it becomes despicable. The people no longer regard membership in a city council or a legislature as a badge of honor, but rather as a mark of suspicion. He is most probably in league with the powers of darkness or he would not have been elected. Honest men have little weight in the councils of many of our cities; they find the atmosphere uncongenial, and retire in disgust, or if they persist in their duty they are soon hounded out by the ring, which finds them inconvenient. Many of our wisest and purest men look on politics as too dirty to touch. They will not descend to the meanness and cunning usually necessary to secure office, nor sub-

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<sup>1</sup> The motives of city councils, state legislatures and national congresses are everywhere called in question. Nobody has much confidence in their public spirit, conscience or wisdom. Newspapers and magazines are full of slighting remarks about politics; and so besmirched have politics become by the multitudinous bad practices of legislators that it is as much as a good man's reputation is worth to have anything to do with practical politics. However pure his motives may really be, he will find it almost impossible to convince the public that his interest is unselfish and his methods conscientious, so firmly is the idea of chicanery linked in the public mind with the idea of practical politics. Laws made by legislators regarded in such a light cannot have the respect of the people to any such degree as laws directly sanctioned by the citizens at the polls, or made by legislative bodies under the popular veto and subject to conditions in every way tending to eliminate fraud and private legislation.



ject themselves to the cruel suspicions and slanders that often accompany public life. Mudslinging and the winning power of chicanery too often discourage the wise and good and leave the field to the most callous and unscrupulous.

With the referendum all this will change. Attention will be directed from men to measures. The power for evil of our office holders will shrink to a small fraction of its present bulk. Bad men will be discouraged from entering or continuing in politics because they will no longer be able to accomplish their evil purposes. With these changes the suspicions and mudflinging now so prevalent will decrease, because their causes will subside. As discussion of specific measures takes the place of partisan abuse, men of probity and wisdom will feel their influence with the people increase, and will delight to exercise their powers of mind and conscience in the direction of public affairs when they can do so without stain or ignominy. The increasing weight of goodness and the returning purity of political life will induce our best men once more to take a leading part in it and stand for office in council, legislature and congress as they used to do in the patriotic days of the revolution. The Senate will again become an Assembly of Sages instead of a Club of Millionaires, and it will no longer be necessary for a man like Beecher to pray "Lord keep us from despising our rulers, and keep them from behaving so we can't help it."

10. *The Referendum will help to bring out a full vote of the better and more intelligent citizens, while it would tend, as a rule, to eliminate the votes of the less intelligent*—the very reverse of the effects which the present system tends to produce. While speaking of the Use of the Referendum in the United States we called attention to a number of facts showing the general tendency of the referendum to cause an automatic disfranchisement of the unintelligent, so that we will confine ourselves here to the other branch of the proposition before us.

In the first place the interest will generally be more distinct in a vote on the grant of a franchise, civil service reform, appropriations for roads, schools, etc., than on a vote

whether A or B shall be councilman or mayor. And in the second place, the effectiveness of the vote will be greater. The influence of these facts in securing a full vote has been very noticeable when Boston, New York and other cities have submitted questions to the direct vote of the people. In Presidential and Gubernatorial elections, when a heavy vote is polled, it is often largely due to the enthusiasm created by some great issue involved in that election; when no such issue is at stake the mere vote for candidates is usually much smaller. In the ordinary process of making laws people think that one of two machines will do the work any way, it makes little difference which, and interference is useless. It will make no odds whether they go to the polls or not. They cannot accomplish anything except by using the methods of the machine, and sinking to the level of unscrupulous, conscienceless war. Mr. Arrowsmith says:

"A few years ago the New Jersey legislature submitted to the citizens of Orange the acceptance or rejection of a measure providing for the election of a new officer, president of council, at a salary of \$1,000 per annum. Now, out of a citizenship of upwards of 5,000, almost altogether opposed to it, only a small percentage of the voters expressed themselves upon the question. I did not vote upon it, and my neighbors exhibited a similar indifference. Why? simply because we Orange folks knew that our wishes would be set at naught, and the politicians would come to Trenton and carry their point with or without our consent."

Such a reference was not a referendum, because the vote of the people was not intended to be final. It was a sham; the people knew it lacked *effectiveness*, and altho they were interested in the question they stayed at home. The real referendum is final and effective, and encourage the people to go to the polls for the same reason that it encourages the best men to enter political life. It is full of strength, hope and progress. Let the people once feel that they are really sovereign and they will vote and look after their own interests, and instead of 40 to 60 per cent. stay-at-homes among the "better classes," who leave the field to the machines, we shall have a reasonably satisfactory expression of the people's will. Ask a man if he wants a tenderloin steak or a bit of leather for his dinner, and if he knows he will get leather any way

he may keep his mouth shut; but if he knows that what he says will settle the question, he will express himself vigorously.

HELP THE PAPERS TO TELL THE TRUTH AND USE DIGNIFIED  
ENGLISH.

11. *The elevation of the press* is one of the effects of the Referendum, and one which alone is sufficient to make it an incalculable boon. One of the most noticeable and important of all the many changes produced in Switzerland by the adoption of Direct Legislation, is the substitution of fair debate for noisy vituperation in the columns of the daily papers. It will do a similar work in America, and the Lord knows that we sorely need such a change. As measures are put in the place of men, sober discussion will take the place of the traffic in abuse. The tendency to manufacture facts, and deluge the country with sophistries will not so readily yield, but even in this respect there is sure to be a great improvement. When the people come to direct their own affairs they will demand the truth; they will want the actual facts, so that they may judge correctly in respect to their business, just as a board of directors of a private corporation wants the facts, and regards deception of themselves as one of the most unpardonable sins.

THE PEOPLE'S UNIVERSITY.

12. *Direct Legislation will have a profound educational effect.* Wendell Phillips said long ago that the discussions accompanying presidential elections give the people a tremendous intellectual lift every four years. With the Referendum, the progress will be continuous instead of spasmodic, with intervals wide enuf for the pupils to forget nearly all that they learn at each lesson, as at present.

Nowhere on the face of the globe do you find as high an average of keen intelligence as among the men of a New England town trained from boyhood in the town-meeting. Continual voting on measures supplies an invaluable discipline

in place of the retrograde influences often involved in personal elections. Every citizen's sphere of thought and responsibility will be enlarged by the Referendum, and growth will be the result. Besides being a University in itself, the Referendum will make the public welfare depend so directly and obviously on the morality and intelligence of the people, and not on the sagacity and probity of a few individuals, that patriots, statesmen and business men will combine to develop to the utmost every means of educating the masses, and a great impetus will be given to popular education, with a corresponding improvement in the results.

It is interesting to note that, according to Mulhall, Switzerland is the best schooled country in the world. The percentage of children attending school is far above that in any other country in Europe or any state in America. The per capita expenditure for education is correspondingly high, and the diffusion of knowledge is remarkable.<sup>1</sup> The Referendum educates the people directly, and creates a powerful sentiment in favor of the thoro education of the children.

History has only one other example of a people so universally cultivated, and that is the still more remarkable instance of the Athenians. Among all the Greeks, they were the most cultured, and they were far the most democratic. The Age of Pericles, and immediately succeeding years, when Grecian civilization was at its height in Athens, with a cluster of great philosophers, statesmen and poets such as the world has never seen before or since, corresponded with the full bloom of democracy. All power was in the hands of the people, who made the laws by direct discussion and vote

<sup>1</sup> It is interesting to compare the expenditures for education and for the army in Switzerland and in some of the other chief countries of Europe. The figures are from the *Clarion* of March 12, 1898:

Country	Expenditure per capita	
	For Army s. d.	For Pub. Education s. d.
France.....	17 4	3 0
Great Britain.....	16 0	2 4
Holland.....	15 7	2 9
Germany.....	10 4	2 0
Russia.....	8 6	0 2
Belgium.....	6 0	2 2
Switzerland.....	3 8	3 10

Switzerland spends comparatively little on the army and much on education.

in public assemblies of the citizens. And the historian, Freeman, says that the average intelligence of the assembled free-men of Athens was higher than the average intelligence of the English House of Commons, which is probably the equal of our Congress.

#### DEVELOPS MORALS AND MANHOOD.

13. *The emotional development of the people, as well as their intellectual growth will follow from the Referendum.* The consciousness of added power and responsibility will give the voters a new dignity and a nobler manhood. They will feel like judges in the court of final appeal. Not mere selectors of somebody to boss them, but rulers themselves. Not mere nominators of a sovereign, but sovereigns. Such changes in spiritual attitude and environment always work most powerfully upon the moral and emotional development of the individual and the race. The patriotic, law-abiding, law-enforcing sentiments of the people will be specially intensified by the Referendum, because they will know that the country is theirs not merely in name, but in fact; not merely to live in and use as some one else bids them, but to mould and control for themselves.

#### A STEADYING INFLUENCE—THE SOCIAL FLY-WHEEL.

14. *The Referendum favors stability* by developing patriotism and education, securing greater simplicity and better enforcement of law, driving bad men out of politics and bringing good men in, supplying a safety valve for popular discontent, and requiring a more careful consideration of legislation. Long use of the Referendum has shown that it is conservative. This clearly appears from the facts already stated concerning its use in this country, and its record in Switzerland for thirty years shows that two-thirds of the measures submitted to the people were rejected by them.<sup>1</sup> If the votes

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<sup>1</sup> Direct Legislation Record, 1897, p 17: One of the most important of the advantages of the Referendum is the fact that it forms a *drag* on *hasty* legislation. There are two reasons for this tendency: First, an agent is apt to give more consideration to his action when he knows that the watch

of the legislators had been final, many of the rejected measures would have been law and some of the best measures adopted by the people would not have been passed by the legislators. An open door to popular decision gives discontent a peaceful vent—prevents its *accumulation* and draws it away from destructive methods of escape. The present system affords it no reasonable means of exerting its power, and allows it to accumulate indefinitely. The importance of this matter can hardly be overestimated. Anglo-Saxon manhood, confined beneath the pressure of accumulating injustice, is the most dangerous explosive known to history. Macaulay predicted that it would destroy America—industrial oppression of hopeless masses leading to revolution; but Macaulay did not know about the Referendum that is going to relieve the pressure, we hope, before the explosion comes.

The Referendum reduces to a minimum the danger of broken peace. Nothing can oppose so strong a bulwark against an appeal to passion as the knowledge that the *PEOPLE* made the law and *can change it* when they please—the knowledge that there is no selfish power, deaf to reason and impervious to sympathy, imprisoning progress in the dungeons of iniquity, whence only force can hope for speedy release, but that deliberate and careful discussion before the great, honest, justice-loving people will remedy every wrong. Such knowledge will remove the causes that have produced the growth of anarchy. *It is smothering discontent in hopelessness that breeds poison.* Every anarchist I ever heard express himself had much of truth in what he said. It was his hopelessness of obtaining the justice he sought by peaceful means that made him advocate fire and bomb. An anarchist generally is a man who feels intensely the pressure of wrong conditions, and whose nature has more of recklessness than hope. Give us the Referendum and the path will be

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and control of his principal are continually upon him, than if he is beyond the reach of interference and can do as he likes without interruption. Second, not only will the legislators give more attention to what they do when the people are to pass on their acts, but the fact that a large body of citizens must make up their minds before the bill can become a law will itself necessitate far more discussion of the measure than when only one or a few persons do the deciding, especially if influence, money or partisanship give the few their decision beforehand without the trouble of discussion.

so plain that Anarchy will soon go out of business. There is no such thing in Switzerland. It is foreign to real democracy, for there the obstruction to your wishes is the people, and you can't get rid of them with a bomb.

It is sometimes objected by those who oppose Direct Legislation, that the Initiative will give all sorts of cranks a chance to bring their ideas to the front. But that is really one of the advantages of the institution. It enables discontent to find out just how big it is, gives it form and precision, sifts out the kernel of truth and justice at the heart of it, lifts it into the fresh air of public discussion before it has a chance to ferment and explode. Even the worst cranks would probably be diverted from violence to peaceful petitions and efforts to educate the public to their ideas. The petitions would cause no trouble, not even the effort of a veto, until they rose to 20,000 in Massachusetts and 70,000 in New York, and if there were 20,000 citizens in the Bay State who were united in the opinion that a certain change should be made in the law of the state, surely the matter would be worthy the careful attention of the people.

Under the Referendum, the street car men of Brooklyn or Philadelphia would not give up their work for the privations and turmoil of a strike, nor would they suffer in hopeless silence, but they would state their grievances at the head of a petition for the Referendum on Municipal Ownership of the Roads, and get their friends to circulate it, and then vote the secret ballot for the transformation that would give them a voice in the government of the industry in which they are engaged.

Under the Referendum, the unemployed would not parade the streets of our cities in angry, hopeless mobs, but they would set the wheels of the law in motion to give them complete justice, instead of the patchwork of hated charity.

Not only will revolutionary and disruptive forces become comparatively harmless under the Referendum, and progressive forces work more smoothly and steadily, but even the unavoidable difficulties and errors incident to the government of large bodies of men will be more serenely and calmly dealt

with. People are not so apt to find fault with what they do themselves as with what is done by others. Take a man who is scolding about something and prove to him that it is his own doing and he becomes quiet and moderate. Watch a mechanic trying to use a defective piece of machinery made by some one for whom he is not responsible, and see how blue the air will be with deprecation or something worse; but let him endeavor to use an imperfect machine made by himself, and see how good natured and tolerant he is, and how patiently he seeks to remedy the defect. So censure and ridicule without measure are heaped upon the acts of councils, legislatures and congresses, but note the atmosphere of quiet acquiescence when the people have spoken, even tho the interests involved are of the most tremendous moment and the preceding struggle was most intense.

The following selections illustrate these points. Read first a few of the extracts collected by Mr. Pomeroy, showing the light in which many legislative bodies are regarded, and then compare the expressions of cordial acquiescence in the people's decision in 1896, on the part of those who had advocated men and measures that were not successful at the polls.

#### CONGRESS.

##### *From the Outlook (religious).*

"Congress has adjourned. It has lived without achievement; it dies without honor. It was elected by an overwhelming majority. At the end of its career it was defeated by a majority not less significant."

##### *From the New York Herald.*

"Congress drew its final official breath amid a wild saturnalia. Champagne flowed like water, women of ill repute swarmed the corridors and sang songs in the public restaurants with inebriated Congressmen in the small hours of the morning. Between roll calls members staggered between their places and the bottle."

#### NEW YORK LEGISLATURE.

##### *From the Review of Reviews.*

"Republican politicians at Albany turned out to be as selfish and unscrupulous as their Democratic predecessors had been. The opposition of Mr. Platt and his friends wretchedly mutilated the reform programme."



*From the New York World.*

"The New York State legislature of 1895 was probably the most incompetent, vicious and useless that the people were ever called upon to pay for. The session itself cost the 7,000,000 people of the State almost as much as the 1894 term of the British Parliament, which made laws for 300,000,000 of its citizens and colonists."

Legislative Body.	No. of laws	Cost of maintenance.
Congress .....	351	\$3,477,834
British Parliament .....	266	468,640
New York Legislature.....	about 700	420,000

(The second session of the 53d Congress, which legislated for 70,000,000 of people, cost nearly eight times as much as the British Parliament, legislating for 300,000,000.)

*From the Outlook.*

"Distrust of legislation has been widened and deepened by the record of the New York body just adjourned. . . . This legislature, more than any other of recent years, was elected on the pledge of reform. . . . It was pledged to ballot reform, and passed a blanket ballot bill which permits the ballot of the bribed voter to be identified by the purchasers.

"It was pledged to a corrupt practices act, requiring sworn itemized statements of the receipts and expenditures of campaign committees, and ignominiously rejected all measures designed to fulfill this pledge.

"It was pledged to public school reform, and defeated the bill which had the support of all the reform organizations.

"It was above all things, pledged to the complete overthrow of the Tammany Hall police system, yet it passed the police bill making mandatory the Tammany system of a bipartisan commission and then rejected the bill giving the honorable commissioners appointed by Mayor Strong the power to reorganize the Tammany force."

## PENNSYLVANIA LEGISLATURE.

*From the Voice (Prohibition).*

"The Pennsylvania legislature expired to-day without a mourner. In the early part of the evening a number of the members were visibly affected by liquor, and with howls, yells and whistling did all in their power to make night hideous. The climax was reached at midnight. Then it was that the most disgraceful scenes that have ever occurred within the halls of the State Capitol took place. . . . Some of the members were not satisfied with what they could drink, but threw the liquor over each other, so that when they emerged from the room they were spattered with beer from head to foot; others carried bottles with them; others had lunch sent to them at their desks, where they entertained their "lady friends."

## MASSACHUSETTS LEGISLATURE.

*From Harper's Weekly.*

"It has been widely and most regretfully noticed that during the last ten years or so the Massachusetts legislature, once a body of exceptional purity, intelligence and public spirit, has become more and more an assemblage of ordinary political hacks, accessible to corrupt influences."

## MICHIGAN LEGISLATURE.

*From the Detroit Free Press.*

"It would be impossible within a reasonable space to record the sins of commission and omission committed by the present legislature. . . . The whole course of the legislature is indicative of venality and of servility to the machine. Lobbyists may have had less expensive work at times past, but they never found it easier. Our misrepresentatives go so far as to say that the people shall not voice their opinion upon a great constitutional question. They are without rights which the legislators are bound to respect. It is for the machine and the corporations. . . . We have in Michigan the most terrible example yet furnished in a time of profound peace of what calamities may result from a perversion of the principles of representative government."

## INDIANA LEGISLATURE.

*From the Review-Herald, Battle Creek, Mich. (religious).*

"The Indiana legislature has won for itself a distinction for defiance of law, even in the days of lawlessness. A Republican legislature has struggled for supremacy with a Democratic executive, and the contest culminated on the night of the 11th in a wild riot. Chairs, revolvers, books, fists and boots were freely used. More than a score were severely injured. . . ."

"The disgraceful scenes that are witnessed in some of our legislatures are sufficient to cause a deep blush of shame on the cheek of every American."

## ILLINOIS LEGISLATURE.

*From the Chicago Times-Herald.*

"If the honest, law-abiding people of Illinois could have been present in Springfield to witness the extraordinary closing hours of the thirty-ninth general assembly, they would have been led seriously to doubt whether there exists in this State a republican form of government."

## ARKANSAS LEGISLATURE.

*From the Farmers' Tribune.*

"Representative Yancy disclosed how the Iron Mountain Railroad had been able to buy and control the legislature of the State at \$100 per vote. There is no doubt that enough legislators were under pay to swing the vote in the favor of the railway company."

## TEXAS LEGISLATURE.

*James Armstrong in The Coming Nation.*

"With the exception of prayer, excursions and the payment of salaries, I know nothing which that august body has successfully done. They have insisted on mileage while traveling on passes, and laughed to scorn every proposition to curtail expenses. Their conduct from the first day of their meeting has elicited nothing save my sovereign disgust."

Now read a few more paragraphs from some of the most strenuous advocates of the party and policy that was defeated at the polls, and mark their quiet acquiescence in the people's verdict against them.

*William P. St. John, treasurer of the National Democratic Committee said:*

"The people have declared themselves unmistakably. I therefore cordially acquiesce."

*The New York Journal said:*

"The people have chosen Major McKinley instead of Mr. Bryan to be President. Nobody has a right to object, for the people's will is sovereign. It is the high privilege of the citizens of this Republic to decide for themselves what is good for them, and when they happen to be wrong they always have the good sense to suffer the consequences with patience, knowing that at the ballot box they can set things straight again. The Journal regrets the decision of the people. Four years, however, constitute an insignificant space in the life of a nation. Let us hope that the predicted confidence and prosperity will be forthcoming. The Journal has no inclination to quarrel with the jury of the people because of their verdict."

*The Chicago Evening Dispatch said:*

"Wait. It is only four years. The mills of the gods grind slowly, but they grind exceeding small; wait. To dispute the will of the majority is revolution, and the Dispatch believes in the perpetuity of the nation, and concedes that what a majority of the people want all of the people can stand. Our faith is pinned to American citizenship."

*The Wheeling (W. Va.) Register said:*

"But we have faith in the American people, in their common sense, and in their rugged honesty. Four years is not long, and Mr. Bryan is young."

*The Indianapolis (Ind.) Sentinel said:*

"The result will come as a great disappointment to thousands, but the fundamental principle of our Government is acquiescence

in the will of the majority, and, therefore, all good citizens will reconcile themselves to making the best of what they may possibly consider a bad matter."

*The Wilkesbarre (Pa.) Leader said:*

"The will of the people is supreme. Let all cheerfully bow to it and hope that the best that could have been done has been accomplished."

*The Salt Lake (Utah) Herald said:*

"The American people, as a people, cannot be purchased, tho they may be deceived. Those who advocate free silver will accept the verdict of the American people as that of the sovereign power of this country."

*The Houston (Tex.) Post said:*

"The voice of the nation has decided against the Democracy and in favor of Republicanism, and nothing remains, of course, but to bow as gracefully as possible to the will of the majority."

If men can so serenely bow to the defeat of their most cherished hopes when the people speak, altho the door is closed for four long years, how much more calmly would they yield when they knew that it might not be necessary to wait four years but that the decision could be modified whenever the people should consider it best to do so?

#### ECONOMY.

15. *Large economies will result from Direct Legislation* thru the stopping of jobs, extravagant contracts, corrupt legislation of all sorts, cutting down the power of bosses and rings, simplifying the law, reducing litigation and diminishing even the expenses of legitimate government. A single illustration under the latter head will show the economical tendencies of the Referendum. In New Jersey every year about 100 newspapers receive about \$1200 apiece for printing the acts of the legislature, a performance which costs the publisher less than one-tenth of what he receives; \$75 cost to each newspaper, over \$1200 cost to the taxpayer. More than \$100,000 out of the pockets of the people every year merely to enable the politicians to keep in the good graces of the papers, for if a paper misbehaves, it is easy to strike it from the list of

those that are to get the law-money, and not a few papers would die if they did not get this help—a consummation devoutly to be wished, since one-third, or even one-tenth of the papers in the state could do the whole work of the press, and do it better and cheaper than it is done now, with a paper to each 1000 inhabitants in some localities, and four of them (the papers) to publish the laws in a single town of 5000 people. The shrinkage of state legislation under the Referendum and the effective auditing of appropriations will probably save the whole \$100,000 and a large part of the actual present cost. The state could print for itself the laws enacted each year and send a package to every post office or news delivery, where they could be had free upon application.

This is only one little item, but it shows the drift. The ruler is apt to arrange things to suit his own interest. When the people really make the laws, they will arrange things for *their* interests. They will banish unnecessary offices, reduce the salaries of lofty officials, abolish jobbery and extravagance, get rid of the iniquitous spoils system, cut down the power of corporate wealth, rescind all forfeited franchises and take control of misbehaving monopolies. Economy, justice and purity will go hand in hand. Ring-rule and class-legislation will die, and politicians will lose their power, because they can no longer command rewards for their supporters, no jobs, no fat contracts, no rich franchises. The cost of taking the Referendum vote will be very slight; not so much as the saving on many a single contract; not a half of the saving on the one item of printing the laws; not a tenth of the value of many a franchise it will keep from being stolen.

#### IDENTIFICATION OF POWER WITH PUBLIC INTEREST.

16. *The Referendum will identify power with the public interest.* One of the prime sources of evil in our government to-day is the possession of vast political power by private interests. History shows that the law is in the main the expression of the interest of the law-maker. If the law is to be in the people's interest, it must be their act; the enacting and

approving power must be in the people. Power is used in the interest of its possessor. If the power of government is to be used in the interest of the people, they must have continuous and effective control of the government.

Government should be so arranged that interest and power will coincide with justice and the public good. This can only be the case when the real control is in the whole body of citizens of full age and discretion and good character, for the interest of a part is not identical with the interest of the whole, and so far as power is possessed by a part, its exercise may deviate from justice and the public good.

#### THE WORKINGMAN'S ISSUE.

17. *The Referendum will give Labor its true weight. Labor's interest in the Referendum is measureless; it is par excellence the workingman's issue.* The present delegate system places Labor at tremendous disadvantage as compared with Capital. Nearly all the delegates are wealthy or sympathize with the wealthy, or are under their influence. Labor cannot expect a great deal from legislators; and the weapon it has largely relied upon, the organized strike, is being abolished by injunction. Not without reason, for it is certainly against the public interest to allow a big corporation and its employees to settle their disagreements by private war in the heart of a great city, to the vast disturbance of business and perhaps the destruction of life and property—just as much against the public interest as it would be to allow two individuals to settle a dispute by conflict in the public streets. Nevertheless, Labor is coming to be in a very tight place without the strike and without effective representation in the halls of legislation. What is the remedy? Courts of compulsory arbitration would do some good, but the fundamental constitutional cure is Direct Legislation.

Labor unions recognize quite generally the importance of Direct Legislation to them. As early as 1891 ten of the largest national and international trades unions (with a membership close to 200,000) were using Direct Legislation. The

same year Grand Master Workman Powderly recommended the adoption of the Referendum in political government. From 1892 Direct Legislation was the only political demand of the American Federation of Labor until 1894, when others were added. It has been repeatedly and emphatically indorsed by this powerful organization, and its president, Samuel Gompers, is a firm believer in the movement. The Farmers' Alliance, also, as we have said, strongly advocates the Referendum. For two or three years its Supreme Council passed resolutions favoring the discussion of Direct Legislation, and recently an emphatic demand for it has been inserted in their platform.

Any one who will examine the composition of councils and boards of aldermen in our large cities, or of our legislatures and congresses, will realize how small a chance there is that our present law-makers will do full justice to labor. The following facts illustrate the situation:

#### 53d Congress.

Senate.	House.
64 lawyers.	245 lawyers.
10 manufs. or merchants.	14 bankers.
6 bankers.	21 manufs. or merchants.
1 doctor.	5 doctors.
1 farmer.	8 educators.
4 miscellaneous.	25 farmers.
	28 miscellaneous.

Over 70 per cent. lawyers and nearly all the rest belong to the "upper" classes. What chance has Labor with such an assembly?

There are some farmers, physicians, educators, etc., who may perhaps be heard if the speaker is willing. But the farmers are not, as a rule, the sort of men who hold the plow themselves. They are farmers because they own farms. They hire non-owners to do the work. Their financial interests are not with labor.

Examine the present congress (55th):

## Senate.

54 lawyers.	1 brewer.
11 public officials	2 journalists.
(very likely lawyers also).	2 newspaper proprietors.
1 railroad president.	1 literateur.
1 president of express co.	1 planter.
1 capitalist.	1 planter and journalist.
1 miner.	4 farmers.
2 manufacturers.	1 lawyer and farmer.
6 merchants.	1 retired.

Over 60 per cent. are lawyers, and nearly all the rest are members of the professional and capitalistic classes. The Senate has been called a millionaire club, and it is a fact that almost every member is wealthy, or so related in sympathy and interest to the wealthy as to make it very unlikely that he would vote for anything that would put much check on the growth of great fortunes.

## The House.

210 lawyers.	8 bankers.
17 public officials.	3 physicians.
11 manufacturers.	1 pharmacist.
12 merchants.	1 chemist.
3 "real estate."	2 "insurance."
3 lumbermen.	3 planters.
1 coal dealer.	20 farmers.
10 journalists.	1 stock raiser.
7 editors.	1 operator.
1 printer.	1 "machinery."
1 laboring man.	3 retired.

20 not given.

Over 60 per cent. lawyers again—the president and 60 per cent. of both houses are lawyers, and is it not the very instinct of a lawyer to follow the interests of his wealthiest clients? And who are those clients but the great monopolies and trusts? Is it any wonder that sugar has many friends at Washington, and can get what it wants in the tariff? Is it any wonder that



all the efforts of the people to secure a postal telegraph have been abortive? Is it any wonder that the express companies have been able to prevent the establishment of a parcels post, or that the government pays the railroads for transporting the mails eight times the rates paid by the express companies for the transportation of express packages?

The spoils of office under the absolute delegate system have created conditions of nomination and election which naturally produce class government. To be a successful candidate requires, in general, time, money, address, a wide acquaintance and a knowledge of the machinery of politics and law. A workingman or farmer or business man of small affairs is not very apt to be a candidate for any influential office, and if he is a candidate his chances of election are small. He is too busy to do the needful buttonholing; he has no money with which to convince the "boys" that he is a good fellow, fit for office; he has no acquaintance with leading men, and he lacks the knowledge of political tactics which is so useful in winning elections, as well as that really important understanding of government and social affairs which is rightly regarded as a qualification for public preferment. Lawyers, bankers, brokers and brewers, leading merchants, manufacturers, journalists, corporation managers, professional politicians and demagogues—such are the men who carry elections and fill the offices, and these are not the men most likely to be in real sympathy with the great mass of the people, or to have interests identical with theirs, or to be capable of truly representing them; they are more likely to represent the great trusts and corporations whose legislative and administrative interests are, to a large extent, antagonistic to the public interest. If the mass of the people were really represented, the tide of affairs would be turned from the progressive congestion of wealth toward the progressive diffusion of wealth.

In illustration of the sort of chemical composition that is possible in a state legislature. I quote from a Hazleton (Pa.) paper of last year (1897):

"In the next Pennsylvania Legislature will be found one gambler, one base ball umpire, one preacher, eight men who declare they

are 'gentlemen,' nineteen without occupations, twenty-seven lawyers and one pugilist. Of the members, three were convicted of larceny, one was tried for murder and acquitted, three have been in insane asylums, while eight have been at Keeley cures and four are divorced."

• THE PEOPLE'S ISSUE.

18. *Not the producing classes alone, but every other class in the community will be benefited by the Referendum.* It must be clear by this time that all who wish justice and good government will be benefited by Direct Legislation, and it is equally true that even the bosses and tricksters will receive a priceless boon by the removal of the temptations that help to make them evil men, and the establishment of conditions tending to lift them to a nobler plane of life. Under the Referendum, those who desire political power must become true-hearted orators and public-spirited philosophers instead of accomplished wire-pullers.

The Referendum is in no true sense either a class-measure or a party-measure. The latter point has already been brought out by our review of the persons and platforms that favor Direct Legislation, and by the record of actual referendum votes, showing how independent of party lines the voting usually is. A single case may serve to bring the matter strongly to mind. In Nebraska, in 1896, the Republicans submitted twelve amendments to the people and were defeated by the Populists at the polls, but the amendments received majorities ranging from 54 to 70 per cent. of the votes cast, while the Populist majorities on the eleven state officers elected and on the Presidential electors ranged from a plurality of 50 per cent. to a majority of 54 per cent.

A COROLLARY FROM ESTABLISHED LEGAL PRINCIPLES.

SIMPLY AN APPLICATION OF THE LAW OF AGENCY.

19. *Direct Legislation is simply an application of the fundamental principles of Agency recognized in every court of justice in the civilized world; viz: That an agent must hold himself at all times subject to the command and approval*

of his principal. If you employ an agent to manage your business, he expects to do as you say in all things. He will advise you, but if you are not convinced he must do your way and not his; and if he is not willing to do your way, he resigns, or you discharge him. He may plan, but you have the power of instant veto, and you do not have to wait till the end of the year. If you did, you might find your property mortgaged or sold or given away beyond recall.

Men often speak of their theories as tho they were facts. Because of our theories of what government ought to be and is intended to be, we have fallen into the habit of calling our representatives and misrepresentatives the 'agents' of the people; but it is not true. An agent may be instructed by his principal at any time, and he is bound to obey; he must submit his plans in respect to the principal's business to the principal whenever requested to do so, and the principal may reject them or amend them if they do not suit him; the agent's power may be revoked whenever he misconducts himself; and in every respect he is subject to the will of the principal; an instrument to carry it into execution, and not a person to set up his will in opposition to the principal's and override or disregard the principal's wishes in his own affairs—that sort of a person is a master, not an agent.

To one who understands the nature of agency, and knows that an agent is simply an instrument in the hand of the principal to execute his purposes, it sounds very odd to call city councilmen and state legislators "agents." They ought to be, but they are not. They have some of the symptoms, but in other respects they are found to be a very different sort of animal. Queer agents who can sell or give away my property against my wish and protest; queer agents who can refuse to manage my business in the way I tell them to, and who may violate my orders and disregard my instructions, and still be safe from discharge till the term for which I employed them to act for me has expired. You engage an architect to draw plans for your house, but you expect to have the plans submitted to you before your money is spent in building. Legislators are not agents, but masters; and the

people do not, for the most part, govern themselves, but merely select the persons who are to govern them. These legislative masters have many interests in common with the rest of the people, and not infrequently wish to be re-elected; so they act to a considerable extent as real agents would. But they are not real agents, for they are not *bound* to act for the principal's interest or according to his instructions, and every now and then, when their interests are strongly opposed to the people's, and they think they can act in such a way as not to arouse public indignation, or they have a political machine at their backs assuring re-election whatever they do, or the interest involved seems more important to them than the chance of re-election—then they give away franchises, lease city gas works, make bad contracts, pass laws for their private benefit, and act in public affairs in many a way they would never dream of acting if the business in their charge had been intrusted to them by an individual or company employing them as agents subject to the principal's supervision, instruction, veto and discharge according to the universally recognized principles of the law of agency. A man who can give away my property against my protest and without redress, and can make laws that I have to obey for a year or two years or four years, till he goes out of office, is not my agent, but my master for the term.<sup>1</sup>

Our legislators and officials will never be really the people's agents, the people's will will never be the actually and continuously governing will, until the people claim the principal's rights of instruction and veto, revocation and discharge.

#### EXPERIENCE.

20. *Experience* speaks strongly for the Referendum, not only from its successful use in the United States, but also from

<sup>1</sup> Not only the principles applicable to agents strictly so called, the class to which legislators ought to belong, but also the laws and usages of dealings with servants, contractors, etc., point to the Referendum idea. If you have a cook and she makes a broth you don't like, you do not have to swallow it, and you may discharge the cook if she won't make things right; but legislative soups you have to take, no matter how unpleasant, and you are compelled to wait one year, two years or four years to get rid of the rascally cooks. If your tailor makes a suit of clothes that does not fit, you do not have to wear it, nor pay the tailor, either, unless he makes it the way you want it. But with the making of law you do not exhibit so much sense; you have fixed things so that you are obliged to wear the misfit and pay the tailor just the same as if it were a fit.

its use in England and Canada, and most eloquently of all from the splendid results of its complete adoption in Switzerland.

In Canada the Referendum is often used to ascertain public opinion on important measures, and has done some excellent work in the same way as in our states and cities when used voluntarily by the legislatures or councils.

In England the Referendum principle is very effectively applied. Every "appeal to the people" after each dissolution of parliament is practically a Referendum. Parties go to the people, not with vague generalities muddled in a heap of promises which the promisors never dream any one would be so discourteous as to ask them to fulfil, but with a distinct course of legislation clearly marked out, a definite and practical measure reduced to the very terms it is proposed to enact into law, an actual bill which the people sit in judgment upon, hear the advocates for and against and reject or approve, as they see fit. England is slow in some things, but the mother can teach the daughter a few good lessons if the young lady will only listen with her nose at par or lower. When the English make up their minds, and elect a new parliament to carry out a reform, the members meet at once and put the will of the people into action. The old parliament is dead, and the new one begins to move as soon as the victory at the polls is assured. But with us it takes six months or a year for the new Congress to get hold of the reins, and meanwhile the old-boys, whom the people have repudiated, continue to drive to destruction or anywhere else they please.

It is to Switzerland, however, that we must turn for the fullest development of the referendum. Prof. Louis Waurin, of the University of Geneva, says:<sup>1</sup>

"In the middle of this century the aristocratic regime in Switzerland was succeeded by that of representative democracy. The pure representative system, however, was not destined to last long. The people soon became aware that in the latter regime the country was overridden by political 'coteries,' prone to sacrifice the general good to party or personal interests, and thus was brought about the development of direct democracy. Then appeared two institutions: The Referendum and the right of popular Initiative, to which has of late been added, as a necessary complement, proportional representation."

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<sup>1</sup> *Progressive Review*, London, July, 1897.

The evolution and effects of Direct Legislation in Switzerland are so important that a knowledge of its history there seems almost essential to anything like a thoro understanding of our subject. The following resume<sup>2</sup> will give the reader the principal points:

Fifty years ago Switzerland was more under the heels of class rule than we are to-day; political turmoil, rioting, civil war, monopoly, aristocracy and oppression—that was the history of a large portion of the Swiss until within a few decades. To-day the country is the freest and most peaceful in the world. What has wrought the change? Simply Union and the Referendum—Union for strength, the Referendum for justice. Union to stop war and riot—the Referendum to overcome monopoly, aristocracy and oppression. A solid confederation of the twenty-two cantons or states, with a good constitution, was founded in 1848. Peace followed, but the railroads, politicians, aristocrats and monopolists continued to plunder the people. In 1858 a heavy subsidy was granted a railroad by the legislature of Neuchatel. This opened the eyes of the Switzers to the “beauties” of the representative system. They began to cast about for a remedy. Some of the ablest citizens had for years been calling attention to the value of the Referendum (which was practiced in a few of the small forest cantons), urging the extension of the method to other states and to the Union. The people saw that it was of no use to put faith in parties struggling for public office, or to continue trying to guess which candidates might withstand the corruptions of power, and so they decided to trust themselves. In 1863 and a few years following, six of the leading cantons adopted the Initiative and Referendum, and to-day Direct Legislation is practiced in all of Switzerland's cities, most of its communes, in 21 out of the 22 cantons, and in the Federal Government. Fourteen of the cantons have the obligatory Referendum, and seven the optional. The Confederation adopted the Referendum in 1874. The Initiative is in use in 17 cantons, and the Federation adopted it in 1891. The Referendum clause of the Federal Constitution reads as follows:

“Federal laws as well as federal resolutions which are binding upon all, and which are not of such a nature that they must be despatched immediately, shall be laid before the people for acceptance or rejection when this is demanded by 30,000 Swiss voters or by eight cantons.”

The amendment of 1891 provides for the Initiative “when 50,000 voters demand the enactment, abolition or alteration of special articles of the constitution.” As constitutional lines are very loosely drawn in Switzerland, the people will be able to initiate almost any measure they choose. Let us look at the results. Mr. W. D.

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<sup>2</sup> A condensation for the most part from the writings of Mr. Sullivan, Mr. McCrackan, Karl Burkli, Sir Francis Adams, and Hon. Boyd Winchester, ex-U. S. Minister to Switzerland.

McCrackan and Mr. J. W. Sullivan have made exhaustive studies of Swiss affairs, and to them I owe most of the facts I give about the Referendum there. Mr. Sullivan has the story of Direct Legislation in writing from Herr Carl Burkli, of Zurich, known as the "Father of the Referendum," who says: "The masses of the citizens of Switzerland found it necessary to revolt against their plutocracy and the corrupt politicians who were exploiting the country thru the representative system. . . . The plutocratic government and the Grand Council of Zurich, which had connived with the private banks and railroads, were pulled down in one great voting swoop. The people had grown tired of being beheaded by the office holders after every election. And politicians and privileged classes have ever since been going down before these instruments in the hands of the people."

The Referendum has been carried most nearly to perfection in Berne, the great canton of half a million people, and in Zurich, with its 340,000 inhabitants. The legislature of Zurich consists of a single house of 300 members. It meets two or three times a year for a two-weeks' session. It cannot grant a privilege to a corporation, nor create an office, nor grant a contract. Every enactment and every appropriation above the ordinary limited sums for purposes specified in the constitution, must go to the polls. And the consequences—let me quote Mr. Sullivan verbatim, so that there may be no mistake: "The Zurich legislature knows nothing of bribery. It never sees a lobbyist. There are no vestiges remaining of the public extravagance, the confusion of laws, the partisan feeling, the personal campaigns, characteristic of representative governments. . . . When men of Zurich, now but middle aged, were young, its legislature practiced vices similar to those of American legislatures; the cantons supported many idling functionaries, and the citizens were ordinarily but voting machines, registering the will of the political bosses. . . . To-day there is not a sinecure public office in Zurich; the popular vote has cut down the number of officials to the minimum, and their pay also. . . . There are no officials with high salaries. . . . There is no one-man power in Switzerland. . . . No machine politician lives by spoils. . . . The referendum has proved destructive to class law and class privilege." In other words, Switzerland has rid the body politic of its vermin—it has taken politics out of the slums and civilized it. Direct legislation has destroyed the power of legislators to legislate for personal ends, and so has punctured the heart of evil in legislation.

One of the most valuable results has been the effect on the press. The papers no longer deal in spite, prejudice, sensationalism and slander, but aim at quiet discussion and solid argument. Says Mr. Sullivan: "The advance of the Swiss press in power, in dignity, in public helpfulness since the day of Direct Legislation in that country has been one of the most remarkable facts connected with the reform." I wonder if it really could give our papers dignity

and helpfulness, and a slight respect for the truth. Mighty Magician, we pray for thy speedy arrival.

The progressive power of the Referendum has been wonderful. It has enabled the Swiss to settle quickly and easily many of the serious problems over which Americans have long been puzzling their heads, and in respect to which they seem little nearer a solution to-day than they were 10 or 15 years ago. We have spoken of the elevation of the press, the overthrow of monopoly, the purification of politics and the economies resulting therefrom, and from the absence of senates, unnecessary offices, high salaries and complex laws; but that is not all. Thru the Referendum Switzerland has secured public ownership of the liquor business, the manufacture of distilled liquors being now a national monopoly, has adopted state life insurance, a national paper currency, a greatly improved factory act, a uniform marriage and divorce law more liberal and sensible than any of ours, established local option in capital punishment, declared that vaccination shall not be compulsory, that religion shall not be entirely swept out of the schools, and that her people are not yet ready to recognize governmentally the right to employment when linked with a demand for "an official status between laborers and employers, with democratic organization of the work in factories and workshops." [And the Swiss are right. It would not be just for the public to attempt such a reorganization until the public or the workers by purchase, or the growth of co-operation, have come to *own* the shops. Democratic organization before that would be confiscation.] All this since 1875, and still we have not spoken of the two most important movements of the referendum period, viz., improved taxation and the nationalization of the means of communication—both the results of Direct Legislation.

Tax reform has proceeded in two directions: First, the reduction of the aggregate of taxation, rendered possible by the simplicity, purity and economy of direct government; and second, the change of the incidence of taxation from poverty to wealth. The latter is one of the wisest and most significant movements of modern times, and is making its claims felt in all advanced countries. In Switzerland it has been carried far toward perfection.

Direct and non-transferable taxes have been substituted for indirect and transferable taxes, and the direct taxes have been made progressive.

Indirect taxes, or those on commodities imported, manufactured, sold, etc., are transferable from the person first paying them, to the consumer, who has also to pay the said person interest and profits on the capital he used to settle the tax in the first instance, so that the rich importer or manufacturer may actually make money out of the tax system instead of really contributing anything out of his own pocket to the support of the government; while the people who consume the commodities taxed, not only have to pay all the taxes, but the dealers' profits on them besides. The government treasury, after all, only receives \$2 out of every



three the people pay on account of the tax system. If the taxes are mostly on articles of ordinary use, the great body of the poorer people bear the bulk of taxation, and a certain class of the wealthy have no burden, but a profit instead. This trick of indirect taxation is what the French statesman Turgot called "plucking the goose without making it cackle." But the Swiss geese have found out the trick, and have turned it into direct progressive taxation, or the trick of plucking the goose where the feathers are thickest, and where it will hurt the least. In several of the more radical cantons the rich and well-to-do pay nearly all the taxes. In Zurich fifty years ago all taxes were indirect; now \$32 out of every \$34, or over seven eighths of the whole, are raised by direct and progressive taxation on incomes, inheritances and real estate.

In the case of incomes, the largest pay at a rate five times as heavy as the moderate ones. In the case of property, the largest fortunes pay at a rate twice as great as the smallest. In the case of inheritances, the tax has increased more than six fold in the last thirty years. The larger the amount of property and the more distant the relative the heavier the rate.

The poorest laborer pays about 2 per cent. of his wages in taxes, being 15 to 30 per cent. better off than before the present system was adopted; the well-paid clerk pays 5 per cent. of his salary, being 10 to 20 per cent. better off; the business man worth \$50,000 or more pays 10 per cent. of his profits, and rests about where he was; while the large capitalist, worth half a million or more, pays 25 per cent of his income, and so gives back to the public a part of the excess that he receives above what he earns. These laws have done a great deal to aid the diffusion of wealth and check the too rapid growth of overlarge fortunes, and the results are seen in the fact that while Switzerland was until recently very poor, the exchanges of wealth per capita there are greater to-day than in any other country of the continent. "It is an extraordinary fact," says Mr. Sullivan, generalizing from Mulhall's statistics, "that the three million Swiss consume as much wealth as the fifteen million Italians." That is, one Swiss, on the average, eats, drinks, wears, travels and reads five times as much as his Italian neighbor.

Not less important is the second great movement above mentioned—the tendency of the government toward the full control of monopolies, shown in the nationalization of the liquor business, a portion of the forests, life insurance and the means of communication and transportation.

As a result of Direct Legislation Switzerland has adopted national ownership of railways, and has the best system of Federal postoffice, telegraph, telephone and express service in existence. If you receive money by postal order the carrier puts the cash in your hands. The mail is delivered *everywhere*. If you want the express you send the order by the carrier. At any post office you may subscribe for any Swiss publication, or for any of the several

thousands of the world's leading periodicals. Letter postage in Switzerland is one cent local, general two cents, book one cent a half pound, newspaper average two-fifths of a cent; express matter at corresponding rates. With the cheapest postage in the world the profits of the system are large, because the Swiss post-office does not have to pay the railroads monopoly prices for transportation.

In respect to the public telephone, the American Consul at St. Gall reported officially May 5, 1892: "The Swiss telephone service is better and the rates lower than anywhere else in the world."

As to the national ownership of railroads in Switzerland, I refer the reader to the circular issued by the National League for Promoting the Public Ownership of Monopolies, and printed in Chapter I of this book, at the close of the section on "Public Sentiment."

The wonderful success of the Swiss referendum is fully attested by the Hon. Boyd Winchester, our former Minister to Switzerland; Sir Francis O. Adams, the English Minister there; Professor Vincent, of Johns Hopkins University; Mr. McCrackan, Mr. Sullivan, Professor Moses, Professor Dicey, etc. Rev. Lyman Abbott's paper, *The Outlook*, speaking of the strong words of approval eminent observers have bestowed upon the Referendum, says: "Apparently there is no conflict in the testimony." The only exception I know of is Mr. A. B. Hart, who seems to have found some of the people in Switzerland who have lost power and privilege thru the referendum, and were, therefore, inclined to growl about the new institution. Mr. Hart confesses that he went to Switzerland prejudiced against the Referendum, and it is not surprising that he should have found the society of ousted politicians and monopolists so congenial that he neglected to form other acquaintances, and filled his letter to the "Post" with assertions that the Initiative "suggests bad measures" (but the legislature never does; no it will not even *suggest* such things); that the Referendum sometimes "kills good measures" (but of course the legislature never does); that the "Swiss voters do not all come out" (like the Americans do!); and that "the Referendum has disappointed its friends in Switzerland." This "powerful" argument, quoted in substance from one so well prepared by foregone conclusions to make it, would almost lead one to believe that the famous ambassadors, professors and authors previously mentioned had formed a conspiracy to deceive the world about the Referendum, were it not that Mr. Hart, on cross-examination, as it were, corroborates their testimony by saying: "Switzerland is an atoll in the surging ocean of European politics. Here the increasing strain which has come upon the representative institutions of other countries is hardly felt. Here the legislature is free from party organization, the business of the country is well and promptly done, the people are content with their representatives. . . . The process of invoking and voting on a Referendum is simple and easily worked. . . . The system undoubtedly leads to public discussion; newspapers criticise; addresses and counter-addresses are issued; cantonal

councils publicly advise voters, and of late the Federal Assembly sends out manifestoes about pending Initiatives." How does this talk about doing the business promptly and well, and about the people's contentment agree with what Mr. Hart said about "disappointment of the friends of the Referendum?" As to this, one of the leading friends of the Referendum wrote to Mr. Sullivan that it was "deeply rooted in the hearts of the whole people. All parties who formerly opposed the Referendum, even the most reactionary and aristocratic, have declared officially their adherence to the Initiative and Referendum as a thoroly good institution." No one objects to it now but a few individuals who stood in the path of progress and got hurt by the wheels of justice, and who comfort themselves with ungracious talk.

There were objections in plentiful measure during the early advocacy of the wide extension of the Referendum, but experience has shown them all to be fallacious. Here are some samples: "It would do well enuf in the little commune or the primitive forest canton, but never would work in the grand canton of Berne, much less in Federal affairs; that was visionary in the extreme. It was an impracticable thing any way, and would keep the people voting from morning till night. Demagogues would rule the people and pernicious tyrannical laws would be passed. The people were inexperienced, short-sighted, capricious, passionate, and the Referendum would prove the source of great expense and a flood of hasty, injudicious, partisan legislation."

As to expense, we have seen that taxes are lower than ever before, and the government more economical. Jobbery and extravagance are unknown, for the people who pay hold the strings of the purse, and politics, since there is no money in it now, has ceased to be a trade.

Instead of partisan laws, it has been proved that people vote on the merits of the measures submitted, the fate of one proposition having no effect on that of another put out by the same organization, and partisanship is reduced to its lowest ebb, as even Mr. Hart admits.

Instead of causing a flood of hasty legislation, the Referendum has proved a drag on the making of laws. In the twenty years from 1874 to 1894 the Swiss Federal Congress passed 175 laws, 19 of which were called to the polls by a petition for the referendum. Eight amendments to the constitution were also passed and two more suggested by the Initiative. So that the people voted in twenty years on 29 questions, ten of which were constitutional amendments, which go to the people in our states now. Sixteen of the laws and amendments were disapproved by the voters and thirteen approved. Every one of the questions received remarkably lengthy consideration, and most deliberate and dispassionate discussion, the like of which is as yet unknown in America. Passing less than a law a year is not much of a "flood" of legislation from the Referendum, is it? Neither does the suggestion of one law in each two years by the Federal Initiative

seem much like a deluge. In twenty years the legislature of Soleure passed 66 laws; all went to the people, the referendum being obligatory; 51 were adopted at the polls and 15 rejected—less law-making, you see, on the face of the returns, than if there had been no referendum. In twenty years the legislature of Berne passed 68 laws; 50 were approved at the polls and 18 rejected. Berne has half a million people, New Jersey a million and a half. Berne, with the referendum, averages two and a half laws a year, and New Jersey 450. So that per million of inhabitants 300 laws are enacted in the United States to Switzerland's five, or 60 to 1. It turns out, therefore, that the deluge is not with the Referendum, but without it. The obligatory Referendum makes the entire citizenship a deliberative body in perpetual session. It establishes principles and avoids the flood of special legislation that sweeps away all sense of virtue from our statute books. The mass of complex, useless and evil laws that breeds lawyers, courts and police, are in Switzerland not passed at all, with a great reduction in the cost of litigation and police.

Mr. McCrackan says: "The Referendum is above all things fatal to anything like extravagance in the management of public funds; it discerns instantly and kills remorselessly all manner of jobs." And again: "Nowhere in the world are government places occupied by men so well fitted for the work to be performed."

Boyd Winchester says in his "Swiss Republic:" "One in visiting the chambers of the assembly is much impressed with the smooth and quiet dispatch of business. The members are not seated with reference to their political affiliations. There is no filibustering, no vexatious points of order, no drastic rules of cloture to ruffle the decorum of the proceedings. Interruptions are few, and angry personal bickerings never occur. . . . Leaves to print, or a written speech memorized and passionately declaimed are unknown. There are none of those extraneous and soliciting conditions to invite to 'buncombe' speeches. The debates are more in the nature of an informal consultation of business men about common interests. They talk and vote, and there is an end to it. This easy, colloquial disposition of affairs by no means implies any slipshod indifference or superficial method of legislation. There is no legislative body where important questions are treated in a more fundamental and critical manner.

"The members of the assembly practically enjoy life tenure. Re-election, alike in the whole confederation and in the single canton, is the rule. Death and voluntary retirement account for nineteen out of the twenty-one new members at the last general election. There are members who have served continuously since the organization of the assembly, in 1848. To some extent this remarkable retention of members of the assembly may be ascribed to the fact that the people feel that they are masters thru the power of rejecting all measures which are put to a popular vote.

"The members of the Federal Council can be and are continually re-elected, notwithstanding sharp antagonisms among themselves,

and it may be between them and a majority in the assembly. They also continue to discharge their administrative duties, whether the measures submitted by them are or are not sanctioned by the voters. The Swiss distinguish between men and measures. They retain valued servants in their employment, even tho they reject their advice. . . . This sure tenure of service makes those chosen look upon it as the business of their lives. Without this permanence, such men as now fill it could not be induced to do so."

Read also the following from Sir Francis Adams:

"The Swiss voter is quite ready to vote again and again for the same candidates. He probably looks upon them as good men of business, with long experience of parliamentary and Federal affairs, and he knows very well that if measures are passed of which for some reason or other he does not approve, he and his fellows can combine to reject them at the referendum. . . . There have been hitherto only two instances of a member willing to serve not being re-elected. . . .

"The debates are carried on with much decorum. There is seldom a noisy sitting, even when the most important subjects are discussed. Interruptions are few, and scenes such as unhappily have of late been painfully frequent in our House of Commons do not exist. The sittings strike the spectator as being those of men of business, tho the members are by no means devoid of eloquence."

And this from Karl Burkli, a prominent citizen of Zurich, Switzerland

"The smooth working of our Federal, cantonal and municipal referendum is, as a matter of fact, a truth generally acknowledged thruout Switzerland. The initiative and referendum are now deeply rooted in the hearts of the Swiss people. . . . Proportional representation is going ahead in half a dozen cantons (Berne, Basle, Zurich, Lucerne, St. Gall) just now, and six cantons (Tessin, Neuchatel, Geneva, Zug, Soleure, Fribourg) and the Federal city of Berne have already proportional representation.

"Our city or municipal referendum goes likewise very well. So, the town citizens of Berne voted this year (April), per referendum, for instituting proportional representation, and last year the town citizens of Zurich (now the largest city in Switzerland, about 130,000 to 150,000 inhabitants) voted for the appropriation and management by the city of the tramways (street car lines).

"All these divers votings—Federal, cantonal, municipal—went on without riot, corruption, disturbance or hindrance whatever, altho with great agitation. So all is well with us, and you may authoritatively say that there is no agitation for its repeal or difficulty in its working, whether in federation or in the cantons or in the cities, as Zurich, Geneva, Basle, Berne, tho these cities are full of foreign elements. Our Swiss political trinity—initiative, referendum and proportional representation—is not only good and holy for hardworking Switzerland, but would be even better, I think, too, for the grand country in North America."

Mr. A. A. Brown, speaking of what the Swiss have done with di-

rect legislation says: "They have defeated monopolies, improved the method of taxation, reduced the rate, avoided national scandals growing out of extravagance; they have husbanded the public domain for the benefit of their own citizenship; they have destroyed partisanship and established a government of the people; they have quieted disturbing political elements, disarmed the politician, enthroned the people; by vote of the people they have assumed authority over railroads, express companies, telegraphs and telephones, reducing freight rates, express charges and tolls more than 78 per cent. below the cost for like service under private control." (Arena, Vol. 22, p. 98.)

With such a record how can we fail to favor the Referendum? Switzerland has solved her problem by making an *intelligent selection of the best among many local forms and extending its application*. Is there not good reason to believe that we can solve many of our problems in the same way?

21. *Authority of the highest character favors the extension of the Referendum in America.* This point was sufficiently discussed in the first half of this chapter.

22. *The drift of public sentiment sets strongly toward the Referendum.* (See above.)

23. *The trend of events, the progress of civilization, the evolution of democracy and the whole movement of modern history is in the direction of more perfect control of the government by the people, a path which leads straight to the fuller use of Direct Legislation.* (See above.)

24. *The fundamental principles of religion and ethics, the law of love, the Golden Rule and the brotherhood of man necessitates the Referendum.* Love and brotherhood deny me the right and banish the wish to assume more power than my fellows, or deprive them of equal participation in the development resulting from decision and responsibility. Only unavoidable necessity can justify unequal sovereignty, and no such necessity exists in cases to which the Initiative and Referendum can be applied.

25. *The final and fundamental political argument for Direct Legislation is that it is necessary to true self-government.* It and it only can and will establish public ownership of the government. It is the only way to prove and overcome misrepresentation with due precision and prompt-

ness. It is the only practicable *means of destroying the great Lawmaking Monopoly* which holds us in its grip to-day, and which is not only a terrible evil in itself, but the prolific parent and protector of other monopolies and oppressions.

If the control of affairs is put in the hands of a few men for life, without responsibility to the controlled, everybody recognizes the fact that the government is an aristocracy. If the control is put in the hands of a few for two or three years without responsibility to the controlled during that time, there is an aristocracy as much as before. The duration of a government does not fix its character, but the nature of the control; and even if time were of the essence of the case, many a monarch's reign has been shorter than the terms of our President and Senators. To have a government by the people, the legislative agents must be subject to the control of the people every moment. If for one instant they cease to be subject to the orders of the people, for that instant they cease to be servants and become sovereigns in place of the people.

It is true that in the early history of America pure representative government produced good results. It is perfectly possible that in a rural community, where the people are nearly on a level, and no strong class distinctions exist, representative aristocracy might take a course quite close to the one in which self-government would steer the ship of state.

But as the simplicity and homogeneity of primitive society give place to the strong contrasts of rich and poor, millionaire and tramp, Back Bay and slums, educated and ignorant, nabobs and nobodies—as the people crystalize into classes under the influence of selfish competition, and class interests grow intense, facing each other in bitter antagonism—as organizations of men are formed to capture the government and the offices for their own private benefit—the divergence between the people's will and the will of the men who contrive to get themselves elected under the name of "representatives" grows larger and larger, until in some of our cities and states scarcely a vestige of real representation remains, and the government is a despotism.

It has come to be perfectly clear that *representation does not represent*, and a little consideration will show that even under the most favorable circumstances, delegate law cannot be relied on to represent the people's will. The facts are briefly as follows

1. It frequently happens that large masses of people have no representative at all in the halls of legislation. In Minnesota about 44 per cent. of those voting (or 161,000 out of 236,000) have no one in Congress to represent them—no one for whom they cast a ballot or who went from their state to stand for their principles.<sup>1</sup>

In Wisconsin 40 per cent. and in Maryland 46 per cent. of the people have no representative in Congress. In 1892, out of twelve millions voting, five and a half millions had no representative in the national government, and in 1896 again nearly half of those voting had no one in Congress in whom they had expressed their confidence or whose selection as a legislator they had endorsed with a ballot.

2. It is a common thing for one party to absorb far more than its fair share of representation. In 1892 New Jersey cast 171,000 Democratic votes and 156,000 Republican votes. The Democrats got six Congressmen and both Senators, or one national representative to 21,000 voters. The Republicans had two Congressmen or one national representative to 78,000 voters. A little irregular strip in the city of Camden, containing a population of 12,725, constituted one legislative district, and the rest of the city constituted another district, containing 58,311 population; the first contained the democratic strength of Camden, the second was republican; each district had the same amount of representation in the legislature. In Essex county, the 3d Assembly district (democratic), contained a population of 11,349, while the 11th district (republican) contained 42,414, and the average population of all the republican districts was double the average population of the democratic districts.

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<sup>1</sup> Most of the figures at hand relate to state votings for national officers, but the same general conditions exist in local votings.



Let us take the present congress (the 55th, elected in 1896) and tabulate some of the striking facts.

Per cent. of votes cast.					Number of Congressional Districts.
With 54½	the Republicans	of Md.	carried every one of the	6 districts.	
" 55½ "	"	" Iowa	"	"	" 11 "
" 58½ "	Democrats	" Ga.	"	"	" 11 "
" 54½ "	"	" Texas	"	12	" 13 "
" 66½ "	Republicans	" Mass.	"	12	" 13 "
" 61½ "	"	" Pa.	"	27	" 30 "
" 57½ "	"	" N. Y.	"	29	" 34 "
" 53½ "	"	" Ohio	"	15	" 21 "
" 55½ "	"	" Ill.	"	17	" 22 "
" 60½ "	"	" N. J.	" every one	"	" 8 "
" 60½ "	"	" Wis.	"	"	" 10 "

These percentages are based on the actual votes for Congressmen. The Republican or Democratic percentage of the vote for Governor or other general officer is very often identical with the same party's percentage in the congressional vote, but in some cases varies a little above or below the latter. For the 54th Congress some of the facts are even more remarkable than any of those in the table. For example, the Republicans of Illinois had only about 51 per cent. of the general state vote and 53 per cent. of the district vote, and yet they elected all but one of the 22 Congressmen. And the Republicans of Wisconsin, with 51 per cent. of the vote for Governor, and 54 per cent. of the district vote, elected every one of the 10 Congressmen.<sup>1</sup>

In the 55th congress, the Democrats of Georgia and Texas had both senators from their respective states, and the Republicans had both Senators from Maine and Iowa, Illinois, Massachusetts, etc.—a fact which in connection with those that precede, supplies the basis for some very interesting conclusions, viz.: That in Massachusetts 1 Republican has more weight in national affairs than 4 Democrats. In Texas, 1 Democrat equals 5 Republicans. In Illinois, during the 54th Congress, a Republican weighed more than 15 Democrats. In Georgia now a Republican weighs nothing at all, and in

<sup>1</sup> The district system naturally tends to exclude a very large proportion (often 40 to 45 per cent.) of the people from representation in congresses, councils, legislatures, etc., and in connection with the gerrymander or the plurality rule, or both, it may even exclude a majority of the people. Imagine a legislative body elected by 40 to 60 per cent. of the citizens voting, and estimate the representative quality of a law passed by a majority of a quorum in such a body—it might represent no more than 12 to 16 per cent. of the voters if honestly passed—not 1 per cent., perhaps, if corruptly passed. Corruption may attain *any* degree of misrepresentation in any legislative body it is able to control. What is the representative quality of a law passed at midnight in the closing hours of a session, with most of the legislators asleep or inattentive, and nobody voting but the man who drew the bill? What is the representative quality of legislation under the iron rule of a presiding officer who recognizes no one to speak for a measure he wishes to exclude? Representation is but a shell without the kernel, a nest from which the bird has flown. The Referendum will put life once more into the dead form.

Maine and Iowa, a Democrat weighs nothing in national legislation or deliberation.

3. The various classes of society are not duly represented in legislative bodies—not represented in anything like the proportion they actually bear to the social total. We have seen in paragraph 17 what the composition of a legislative body is like. A few years ago I examined the census figures of class enumeration and the composition of Congress, with the following results:

The lawyers, with their families, constitute one-third of 1 per cent. of the people, yet they have 60 per cent. of the Senate and House, and the President also—more than 180 times the representation that belongs to them. The bankers number one-tenth of 1 per cent. of the people, which entitles them to one-half of one representative; but they have ten, which is twenty times their fair share.<sup>1</sup>

The farmers constitute 45 per cent. of the people, and have one Senator and thirty-nine members of the House, or 9 per cent. instead of 45 per cent., as they should have—one-fifth of what belongs to them. The laboring people of all sorts number nearly 80 per cent. of our citizenship. What are their representatives? Where are the Senators and Congressmen who are really workingmen and in full sympathy with them and fit to represent them? The bulk of the community is entirely unrepresented by men of their own class and condition, who are the only ones that can thoroly understand their wants and wishes.

4. Ideas are not correctly represented. Voters in different parties agree on some things and voters in the same party disagree on some. The present methods of voting in city and state elections afford no opportunity, as a rule, for registering this agreement and disagreement. There is no definite representation of the opinions of the voters on matters aside from the main issue, and large bodies of men advocating special measures are entirely excluded from representation in the halls of legislation, not being able under the district system

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<sup>1</sup> In the 53d Congress the bankers had 20 representatives, or more than 40 times their fair share, and the farmers had much less than 1/5 of their rightful representation in the 53d Congress, and also in the 55th.

of representation to elect any one at all to stand for even their main idea.<sup>1</sup>

5. Many a question arises after election during the delegate's term of office which was not considered, perhaps was not even foreseen, at the time of his election. The people had no opportunity of expressing themselves upon it at the polls, and the judgment of the representative in the premises may and frequently does differ from that of his constituents.

6. Even where the people have expressed themselves quite clearly, their views may change. They may elect men pledged to certain legislation and afterward, before the pledge is executed, perhaps, the people see reason to change their minds; but without the Referendum the change cannot be ascertained. Imagine a business man telling his agent to-day to buy certain lands or build a house for him, and to-morrow, concluding he did not want the land or the house, but denied the privilege of revoking his order or modifying his plan!

7. The delegate's self-interest may lead him to disregard the will of the people, even when he knows perfectly well what it is.<sup>2</sup> Under present conditions the delegates may give

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<sup>1</sup>Proportional representation will remove the evils of the district system. It would enable each party or organized group of voters to obtain its due share of delegates in council and legislature. But *classes, ideas and interests* would still be far from having a fair representation. The jumble of issues in party platforms and the mixture of measures with persons would continue to make it impossible for the people to give definite expression of their thoughts and wishes. The boss, the ring and the machine would still control nominations in a large degree; the lobby would still corrupt the legislators; questions not considered at election time would continue to come up, and legislators could not be sure of judging as the people would judge. Even in Switzerland, where, according to the latest reports, eight cantons have proportional representation along with the referendum, the legislators are not able to judge correctly of the popular will, and their action is frequently reversed at the polls.

Proportional representation is good; it gives each body of citizens a chance to get some of their ideas represented in the deliberations of legislative bodies; it helps to make the legislative body a picture, on a small scale, of the chief groups in the citizen body; but it leaves the legislative body still subject to the fundamental defect of making law by final vote of a body of delegates. The concentration of temptation, the divergence of interest and thought, and the private monopoly of legislative power, with all their attendant evils remain substantially as at present.

No sort of representation, proportionate or not, can be relied on as truly representative unless it is always under the principal's direction and control, so that departures from his will may be corrected and his views and changes of view be registered at any moment he sees fit. The essential thing is the participation of the people at will in the making of the laws.

<sup>2</sup>In a circular issued by the South Dakota Direct Legislation League I find the matter strongly and clearly stated:

When the vote granting a franchise binds us forever, and our representative can get \$5,000 for his vote, while we only give him \$300 for his year's work (even if we should re-elect him), where is his responsibility?

The state or city is our farm. At present we give our servants (legislators, aldermen) almost unlimited power over it—power to mar it; power to

away public property or take other action which will bind the unwilling people beyond the reach of revocation. For example, the Ohio legislature in 1896 passed a law permitting cities to give 50 year franchises to street railway companies. It is said that the friends of the people as against the corporations did not know of the bill till a few days before the legislature met, and then they learned of the plan by overhearing a conversation on a railroad train. They did their utmost to defeat the measure, but failed. The people were strenuously opposed to such monopolistic legislation, but before they could secure a repeal of the law at the next session of the legislature, the city government of Cincinnati was induced to grant a 50-year franchise to the street railways of that city, and the grant could not be withdrawn.

8. Even with the most virtuous delegates and under the most favorable circumstances, representation cannot truly represent in the absence of the Referendum, because no man thinks or feels just like another, much less like ten thousand others of varying shades of thought and feeling. The records of actual referenda set forth in the early part of this chapter show how impossible it is for legislators to represent the people. Time after time, when a number of constitutional amendments and other measures prepared by legislative bodies with the utmost care, have gone to the people, part or all have been rejected, tho passed by legislature after legislature with overwhelming majorities, and totally free from any suspicion of fraud, being intended from the start for reference to the citizens.<sup>1</sup>

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mortgage it—reserving to ourselves scarcely any power except to discharge them after the harm is fully accomplished.

*The city is our stable*, which we commit to these servants, reserving to ourselves only the power to *discharge them* after they have allowed our horses to be stolen.

The constitution is our pasture fence; the State is our carriage; our legislators are our horses. With the present arrangements we harness our horses, hitch them (often wild colts) to our carriage, *throw away lines and whip* and trust ourselves to the tender mercies of Providence, which is supposed to have special care of half-witted people. Our horses may balk or lie down in harness, or they may wildly tear over the pasture, down steep gullies, over rocky roads, and finally knock our brains out, but we have all the time the comforting assurance that our bones will be found somewhere within the limits of the seven-rail pasture fence called the constitution. With the Initiative and the Referendum we would be at all times masters of the situation, keeping the government constantly in our own hands.

<sup>1</sup> In 1850, before Switzerland had developed her system of Direct Legislation, Martin Rittinghausen wrote a little book on "Direct Legislation by

In July, '98, St. Louis voted down by more than 4 to 1 a number of charter amendments passed by the municipal assembly. At a special election in '97, three amendments were submitted to the people of New Jersey by the legislature; two carried and the third was lost, yet this third amendment was the very one that the press and political leaders had predicted would carry by a large majority, since it merely gave women the right to school suffrage, which they had already enjoyed for several years under a statute, and which has been conferred in 26 states of the Union. In 1896 two amendments, establishing biennial elections, were submitted to the people of Massachusetts. They were passed by the legislature in the belief that the people would approve the change; they were advocated by leading men of the highest character and statesmanship, both in and out of the dominant party.

the People" in which he gave nine reasons why the "representative system" (i. e., the unguarded system) should not be tolerated:

1. The representative system is a remnant of ancient feudalism.
2. It is absurd to represent a thing by its diametrical opposite, black by white, the general interest of the people by a particular interest opposed to it.
3. Representation in government is a fiction and nothing but a fiction. Representation does not exist, unless that term is applied to a continual antagonism of those whom one is alleged to represent.
4. Even if there happened to be a case of genuine representation thru some undiscoverable paragon of a representative, the majority of the votes of a country would still remain unrepresented.
5. In the elections the intriguer has the advantage over the honest man, because he will not shrink from a number of methods that are disdained by an honorable candidate; the incompetent has an advantage over the man of ability, because three-fourths of the electors vote, and always must vote, without knowing and without being in a position to judge the merits of the candidate. Besides, in this mendacious system of government, the election is itself an absurd sham. You either ask the voter to cast his ballot according to his own personal convictions, upon the strength of his acquaintance with the capacity or honesty or the policy of the candidate, in which case you ask the impossible; or you ask the voter to cast his ballot for a candidate nominated by a convention, and then you have no election at all; you merely have a nomination secured thru a small coterie, itself dominated by motives of personal interest.
6. In a representative assembly many upright natures change their character entirely; the honest man is there, the readiest to repudiate his convictions. There are temptations to which it is only possible to expose men under penalty of seeing them succumb. One of these temptations is the power to enrich one's self or one's family, to rise in the worldly scale; that is to say, to oppress one's fellow creatures without incurring any responsibility whatever. Hence continual apostasies and the impossibility of ever creating a well-ordered majority.
7. The fear of not being re-elected is absolutely without influence upon the conduct of the unscrupulous representative. The more he violates the confidence reposed in him, the more certain he may be of re-election. Hence the most detestable politicians have the longest legislative careers; they survive the fall of *all* regimes.
8. Under the influence of this same tendency every representative assembly must necessarily be worse than the one preceding it.
9. Representative assemblies are the incarnation of incapacity and evil intent, from a legislative and political standpoint. In legislation they make continual onslaughts upon the liberties of the people or surrender the slender patrimony of the poor to speculators. Politically, the situation is still worse, if that be possible.

The amendments were lost. Governor Wolcott (who was an advocate of the amendments) says in his annual address to the Legislature for 1897:

"On both these important questions, which have demanded so much time of your predecessors, the decision of the people is so emphatic as to afford little encouragement for an early renewal of the discussion."

The best of men, the ablest of statesmen, do not really know what the people want. The only way is to ask the people.

It is clear that the people are not truly represented by delegate legislation. We have some *attempts* at representation, together with *geographical* representation and *boss* representation, and *machine* representation, and *corporation*, *trust* and *combine* representation. Harper's Weekly, discussing "The Breakdown of Legislatures," says:

"Legislatures, as they were originally conceived, are breaking down because the representative character of their members has changed. They have not ceased to represent somebody. They are as responsible now as they ever were in the past; but they represent a small organized element of the voters which is under the control of the 'machine,' and they are responsible to the boss of that machine."

The question of Direct Legislation is equivalent to the question, "*Ought the people's will to govern all the time, or only now and then? Shall the ascertainment and execution of the people's will be made as easy and perfect as possible, or shall it continue imperfect and difficult?*"

Senator Marion Butler says that no man can oppose Direct Legislation "unless he is at heart opposed to popular government."<sup>1</sup>

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<sup>1</sup> This is bed rock. To deny the Initiative and Referendum is to deny self-government and democracy; to affirm self-government and democracy is to affirm the Initiative and Referendum. The whole literature of the subject focuses upon that fundamental fact.

Any one who desires to go more fully into the matter will do well to obtain J. W. Sullivan's "Direct Legislation thru the Initiative and Referendum;" The Direct Legislation Record, edited by Eltwed Pomeroy, Newark, N. J.; United States Senate Document, 340, 55th Congress, second session, July 8, 1898, also edited by Pres. Pomeroy; Dr. E. P. Oberholtzer's "Referendum in America" and "King People;" S. E. Moffett's "Suggestions on Government;" W. D. McCrackan's "Swiss Solutions of American Problems," and the chapter on Direct Legislation in "The American Commonwealth," by James Bryce. The larger histories of Swiss institutions men-

John Quincy Adams said that "the will of the people is the end of all legitimate government on earth."

A bit of history and a closing illustration may emphasize the clumsiness of present methods.

The Republican Congress did their best to please the people in 1883, but in 1884 the people express their disgust by electing a Democratic President. The next four years of Democratic rule did not suit the nation either, and it returned the Republicans to power in 1888. They began to apply their favorite remedy, the revision of the tariff, and passed the McKinley law in 1890. The people express their appreciation by almost annihilating the Republican party in the elections of November, '90, immediately after the said law was enacted, and in 1892 Cleveland was again elected and the Democrats had a large majority in Congress. They, too, appeared to think that the tariff was the only thing above ground worth the serious attention of a Congressman (after his own private affairs are provided for, of course, if he is of the sort that has private affairs), and they consequently got out a new edition of the tariff in 1894. Again the people showed their disgust by an overwhelming rebuke at the polls—the Democrats were completely snowed under, the Republicans again put in control of Congress, a large number of People's Party members elected, about doubling their former representation, and indubitable indications of the Republican triumph which came in 1896. Poor, dumb people, with no chance to tell distinctly what they do want, but driven to the clumsy method of changing agents once in two or four years in the hope that one of them may sometime discover what they desire. Poor, de-

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tioned in the text when speaking of *The Rising Tide of Thought* may also be read with advantage, and a number of valuable magazine articles may be found by consulting Poole's Index and the bibliography in the *Direct Legislation Record*, June, 1898, pp. 45-50. The reader will find that the first six or seven references (Sullivan to Bryce), together with the present chapter, will afford ample material for any ordinary purpose. This chapter follows an original line of thought, contains a good deal of new matter and an analysis of prior treatments. I owe most to the *Direct Legislation Record* and Senate Document 340, which are invaluable to any student of Direct Legislation.

Since this chapter was set up three valuable contributions to the literature of Direct Legislation have come to my notice; first, Eltweed Pomeroy's article, "Objections Answered," *Arena*, Vol. 22, p. 101; second, A. A. Brown's article, "Direct Legislation now in Operation," *Ibid.* p. 97; and third, the 4 page "Leaflet 1," and 12 page "Study 1," published by "The Social Reform Union," of which the Rev. W. D. P. Bliss, of Chicago, is president.

voted, hardworking agents, truly there is not much comfort in your undertaking at best, for when you think you have got things fixed up beautifully and ask for your reward, you receive a tremendous kick from your dumb employer. Instead of this tedious method of kicking out one agent after another till you find one with sense enuf to discover what is needed, and goodness enuf to do it, how much better it would be if the people were allowed to become articulate, able to express their wish distinctly on each separate issue.

The people are now in the position of a deaf and dumb man who was not permitted to tell what he wanted for dinner except by picking out one of several bills of fare and ordering it as a whole. Each bill of fare had the cook's name at the top and a program for dinner, which in every case included some things the dumb man wanted and some he did not want. As he had to select a whole menu, with its cook, and could not pick out particular dishes, and as the cook used her discretion as to which dishes on her list she would serve, if any, and generally mixed up the food and seasoned it with more regard to her own taste than to that of the dumb man, he was naturally displeased with his diet, and kept discharging the cooks as fast as he could, until at last a wiser and more thoughtful cook than the rest devised the plan of sending a blank sheet of paper and a pencil along with the bill of fare, so that the dumb man could write "yes" after the roast lamb, fried potatoes, charlotte russe, or whatever else he wanted, and if there was anything he desired that was not on the bill of fare he could write the name of it on the blank sheet. After this everything went well with the dumb man; his diet suited his taste and he grew healthy and happy; and he could not do enuf to show his appreciation of the cook's skill in preparing the dishes he called for.

#### SUMMARY STATEMENT.

Law making by final vote of delegates is not self-government, but government by an elective aristocracy.

The REMEDY is the extension of Direct Legislation thru the Initiative and Referendum.



The Initiative is the proposal of a law by a reasonable percentage of the voters.

The Referendum is the submission of a measure to the people for final approval or rejection; obligatory, when all but urgency measures *must* be submitted; optional, when submission may be required by petition of a reasonable percentage of voters; legislative, when the option of submission is in the legislature or council; executive, when the option is with the mayor or governor, etc.

Otherwise stated, the *initiative* is the right of provoking a decision of the sovereign people, and the *referendum* is the right of making such decision.

Direct Legislation is already in full use in town affairs. The *Referendum* is obligatory in the making of constitutions, and quite generally in certain city matters, and it *may* be used in all city and state affairs at the option of the legislative authorities.

All that is necessary is to put the option in the people in the case of city and state enactments (or make the submission obligatory) and add the initiative. In this way the principle of Direct Legislation will be consistently applied from end to end of the scale of legislation.

This has been done in South Dakota by constitutional amendment, in Oregon and in Utah a similar amendment has passed the legislature, Nebraska has a statute giving Direct Legislation to cities at their option, San Francisco has the Initiative and Referendum in its charter, etc.

The movement for Direct Legislation (or strictly speaking, the movement for the extension of Direct Legislation) is growing with astonishing vigor and unparalleled rapidity.

#### REASONS for Direct Legislation:

It will establish self-government in place of government by councils and legislatures; democracy in place of elective aristocracy; government by and for the people in place of government by and for the politicians and the corporate interests whose instruments they are.

It and it only can and will destroy the *private monopoly of legislative power*, and establish *public ownership of the government*. The fundamental questions are, "Shall the people rule or be ruled? Shall they own the government or be cwned by it? Shall they control legislation or merely select persons to control it?" The Referendum answers these questions in favor of the people.

It will perfect the representative system, correcting the evils of the unguarded method of making laws by final vote of a body of delegates beyond the reach of any immediate effective control by the people.

It will give the representatives a keener regard for public opinion, and enable the people to pass on their action before it takes effect.

**It will constitute "a curb to the never ending audacity of elected persons."**

**It will remove the concentration of temptation by diffusing power; it will no longer pay to spend much time and money bringing strong pressure to bear on a few legislators, because their action will not be final—they cannot deliver the goods.**

**It will eliminate legislative corruption, kill the lobby, stop black-mailing bills, discourage log-rolling, check the passage of private and local acts, and close the door to franchise steals and all other sorts of fraudulent legislation.**

**The writer of an unsigned article in one of our newspapers, after explaining the workings of Direct Legislation, says with enthusiastic force: "See what splendid and irresistible control it gives the people over the acts of their faithless servants!"**

**It will destroy the power of legislators to legislate for personal ends.**

**It will infinitely dilute the power of bribery.**

**It will take politics out of the slums and civilize them.**

**It will abolish the obstructive power of unscrupulous minorities in legislative bodies.**

**It will undermine the power of rings and bosses.**

**Under Direct Legislation a speaker can no longer play the Czar to any purpose.**

**It will lessen the influence of demagogues.**

**It will check the interference of employers in elections and diminish their power to control the political action of employees.**

**It will diminish partisanship and tend to wipe out party lines in discussion and voting. The records we have given of the use of the Referendum in the United States and elsewhere prove this.**

**In its complete form it will enable men to vote their convictions without leaving their party or deserting its candidates, and so will diminish the warping power of party allegiance.**

**It will elevate public questions above mere party considerations.**

**It will simplify and purify elections.**

**It will work an automatic disfranchisement of the unfit, and bring out a fuller vote of the more intelligent and public spirited who now so frequently stay at home because they do not feel like endorsing any of the platforms or candidates presented.**

**It will simplify and elevate the law.**

**It will stop the prolific output of useless, or worse than useless, laws and ordinances, and limit legislation to the few enactments really needed. The body politic will no longer be disgraced by a fecundity natural only to organisms of a low order.**

**In conjunction with municipal home-rule in local affairs it will relieve our legislators from the pressure of multitudinous private, corporate and local measures, and enable them to give proper attention to matters of real importance; 24,000 bills**

introduced in one session of Congress, and in the New York Legislature 1,200 bills, it is said, to change the charter of Greater New York, to say nothing of the mass of other bills in the same session; think of it!

- It will increase respect for the law and aid its enforcement.
  - It will develop the people's interest in public affairs.
  - It will compel the people to think and act.
  - It will elevate the press and dignify political discussion.
  - It will suppress the inducements that tempt ambition to pervert the government to private uses.
  - It will elevate the profession of politics, weakening the motives that lead bad men into political life and strengthening the attractions of public affairs for men of high character and attainments.
  - It will add to the dignity of every citizen.
  - It will have a profound educational effect on the people intellectually, emotionally and morally.
  - It will favor stability, security and contentment in many ways, affording a natural safety-valve for discontent, and preventing its accumulation, bringing responsibility home to the people, stopping the schemes of political aggressors, etc. Radical changes of policy and delays disastrous to business will become less frequent, because of the speedy consideration and settlement of public questions in accordance with the popular will. It is a guarantee against disorder. Revolution has little chance where the people can easily mould the law.
  - It will do more than any other one thing except the growth of sympathy and conscience to secure a peaceful solution of the great industrial problems that are threatening our civilization.
  - It will furnish a strong decentralizing, counterbalancing force to save us from the centralizing, combining, trust and monopoly tendencies that are hastening us toward industrial despotism.
  - It will save the cost of innumerable impotent petitions and powerless mass-meetings, lobby expenses, abortive investigations, excessive printing of special laws, local acts, private legislation, etc. The cost of legislative sessions of councils, legislatures and so forth could also be reduced; perhaps *one* chamber of moderate size would be sufficient with the Referendum.
  - It will put honesty in power.
  - It will make the right of petition impartial and imperative.
  - It will open the door to all other reforms as fast as the people desire them.
  - It will no longer be necessary to wait till the millionaires and political bosses are ready for the curtain to go up.
- Neither will it be necessary to organize a new party in order to carry a reform. The full sentiment in favor of a measure may be expressed at each election and its growth recorded more perfectly than is possible by party action. Existing parties

- would be eager to endorse a measure that showed much strength or rapidity of growth, and it would be carried long before a new party could rally half the sentiment that might exist in its favor. It takes a strong pull to break up party organizations and get men away from life-long affiliations. That difficulty in the path of reform would be removed by Direct Legislation.
- It is the only way to prove and overcome misrepresentation.
- It means the enfranchisement of all voters on all questions at all times, in place of the disfranchisement of nearly all voters at nearly all times on all questions upon which they differ from councilmen and legislators.
- It means that the mighty power of the ballot may be used not merely one day in the year, but any day the public good requires—that the great engine of popular sovereignty may be made to move whenever the *people* see fit to turn on the steam.
- It means that the people will have constant and effective control of their government.
- It is the fulfilment of Lincoln's grand promise and prophecy, "a government of the people, by the people and for the people."
- It is required by the fundamental principles of ethics and religion. The law of love and the brotherhood of man cannot be satisfied without legislative equality. The rule of the few is unchristian—antagonism, not love; mastery, not brotherhood.
- It is immediately and easily practicable.
- It will make the interest of the lawgiver coincide with justice, and identify power with the public good.
- It will suppress class legislation.
- It will tend to the diffusion of wealth by depriving the wealthy of their overweight in government and placing the preponderance of legislative power in the great middle and producing classes, whose interests are opposed to vast aggregations of private capital.
- Every election is a reference to the people, a submission of certain matters to voters for decision; what we call "Direct Legislation" simply extends the application of the principle and improves the method. Shall we refer things in heaps for a compound judgment on each heap, according to the antiquated method of reference or shall we ask for a judgment on each item?
- The referendum will separate the judgment on men from the judgment on issues.
- It will disentangle issues and permit each one to be judged on its own individual merits, thus ridding us of our conglomerate politics, with its mixture of issues in complex, ambiguous platforms, each mixture to be taken only with a specified candidate or set of candidates.
- It will develop civic patriotism and intelligent participation in public affairs.

- It will make the government more flexible, more easily adapted to changing conditions. Constitutions could be changed readily, statutes repealed or vetoed, new measures instituted, "deadlocks" deprived of their force, and the law rendered altogether less rigid than at present.
- It will tend to unite the people. Interests and opinions on specific measures do not follow existing lines of division. People will be drawn together across the boundaries of the various organizations. The fibres of political fellowship will run over and thru party walls. The upper classes will take a deeper interest in the lower classes, come into closer sympathy and more permanent contact with them and take a more active part in their political education.
- It is the simple common sense right of the people.
- One delegate in legislative hall or council chamber can initiate a measure; surely a thousand or five thousand or ten thousand citizens ought to have as much right as a single delegate elected perhaps by themselves.
- It will help the people to understand their own affairs, their city, state, nation, the age in which they live—a matter of the utmost importance, which cannot be accomplished without the Referendum, for the people will never thoroly understand public affairs till they are called on to decide them.
- Under the Initiative and Referendum, the *people*, with the *co-operation* of councils and legislatures, will exercise the legislative power.
- Direct legislation will make it easier to elect good men and to keep them good after they are elected.
- It will give the chief power in effective form to the great body of the common people, in whom the main hope of the future lies.
- It will give Labor its true weight and influence.
- It is the working man's main issue, and is recognized as such by organizations representing millions of the producing classes.
- It is not a class movement, however, but will benefit all classes; even the bosses and politicians who oppose it will be lifted by it to a nobler plane of life.
- It is not a party movement; leading members of all parties are working for it. It has been demanded in Democratic, Populist, Republican, Prohibition, and Socialist platforms, and sometimes every party in the state has advocated it at the same time. It has been endorsed in 38 state platforms and by more than 3,000 newspapers and magazines representing every shade of political opinion and party affiliation.
- Those who believe in *private* ownership of the government do not like the Referendum, but other people favor it as soon as they understand it.

Many regard it as the primary measure,<sup>1</sup> and few progressive people put it below the second place in the list of leading reforms. Anti-monopolists say, "Public Ownership and Direct Legislation"; temperance specialists declare for "Prohibition and the Referendum"; single-taxers write, "The single tax and the Referendum," etc. There is a story of a group of Greek generals choosing a commander-in-chief. Each was to write down his first choice and his second choice. When the ballots were counted, it was found that the first choice votes were scattering, every general having one, but the second choice votes were all for the same man. Each general cast his first vote for himself or his pet friend, but when it came to his second choice he exercised his unbiased judgment and then there was no difference of opinion. This consensus of second choice votes had vastly more weight than any of the scattering first choice ballots and the man each general voted for next to himself or his pet hobby was recognized as the proper commander-in-chief. The application is easy.

Indirect legislation is not much wiser as a rule than indirect love-making. The people get what they want thru indirect legislation about as well as Miles Standish got what he wanted thru representative love-making.

Direct legislation means control of your servants instead of letting your servants control you.

It is simply a common sense application of the established principles of agency, affording the principal his proper rights of veto, instruction, direction, control and discharge.

Analogy calls for it on several essential grounds.

Evolution requires it. Nothing develops manhood like responsibility in large affairs; nothing develops society like universal thought and discussion, social judgment and concerted action of the whole community.

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<sup>1</sup> The American Federation of Labor made Direct Legislation their first and, for a time, their sole political demand. The National Social and Political Conference at Buffalo, July 3, 1899, by practically unanimous vote, adopted Direct Legislation as the first in the list of measures urged upon the people and to which the conference pledged its support in its famous Address to the Public. Direct taxation, public ownership of monopolies and government control of the medium of exchange are also urged in the order stated.

Mayor Jones makes Direct Legislation with direct nomination of candidates by the people, the first plank in the admirable platform on which he stands as independent candidate for Governor of Ohio. Public ownership of all public utilities is the second plank; an 8 hour day and better wages, third; abolition of the contract system, fourth; and state action to secure employment for the unemployed, fifth.

The Social Reform Union puts Direct Legislation with proportional representation first; public ownership of public utilities, second; taxation of land values, franchises, inheritances and incomes, third; money issued by the government only and regulated in quantity so as to maintain a level average of prices, fourth; and anti-militarism, fifth.

There can be no doubt that Direct Legislation is logically the first of all progressive measures in order of time and importance. It is the key to the whole situation. But in *presentation* I have usually found it best to speak of the evils of monopoly and the benefits of public ownership first, to awaken interest and fill the thought with the vital problems which constitute the great need for the initiative and referendum, thereby preparing the mind for a fuller appreciation of Direct Legislation when it is presented.

Justice and equality demand it.

It is necessary to good government.

If Thomas Jefferson was correct in saying that "Governments are republican only in proportion as they embody the will of the people and execute it," and "Government is more or less republican in proportion as it has in its composition more or less of this ingredient of the direct action of the citizens"—if these opinions of one of the greatest of those who formed the national constitution are to be deemed correct—in other words, if Jefferson knew what he was talking about, then the Referendum is required to fulfil the federal constitution, being necessary to carry out the provision which guarantees the States a republican form of government.

High authorities believe it is necessary to the perpetuity of free institutions—the only thing that can check the encroachments of monopoly and corruption.

It is in harmony with American principles. In fact, it is the necessary outcome of their logical application.

It is already a part of the American system of government. All we need is an extension of methods now in use.

Experience in Switzerland, England, France, Canada, Australia and the United States proves the great value of the Referendum.

It has shown itself to be wisely conservative and judiciously progressive, educating, elevating, purifying, non-partisan and patriotic.

It makes for peace. Where the people decide, war will be rare.<sup>1</sup>

Eminent statesmen, jurists, philosophers and philanthropists advocate it, and distinguished men and women in every sphere of life favor its adoption.

No one of high authority opposes it, and rarely any one objects to it except those whose political supremacy, legislative frauds, franchise schemes or other selfish interests would be endangered by it.

It is the *line of least resistance* in reform to-day.

The drift of public sentiment sets strongly towards the extension of Direct Legislation.

The trend of events in this country is in that direction.<sup>2</sup> Professor Bryce says (American Commonwealth, Vol. I, p. 447), "The Americans tend more and more to remove legislation from the legislatures and entrust it to the people,"—and the facts of this chapter abundantly confirm this statement.

<sup>1</sup> Switzerland has no standing army. It is forbidden by fundamental law.

<sup>2</sup> In his article on Constitutional Law, in the American and English Encyclopedia of Law, Mr. C. S. Lobinger says that the tendency toward Direct Legislation has rapidly increased since the middle of the century, and has manifested itself in several forms:

"1. In referring matters of local interest and administration to the electors of the locality interested.

"2. In enlarging the scope of State constitutions by adding multitudinous administrative provisions, all of them being submitted to the voters.

"3. In the great popular interest in the Referendum itself." (Vol. VI, 2d ed., p. 1022.)

The whole movement of modern history points to the Referendum. It is the fulfilment of Liberty, Equality and Justice, for which the American and French revolutions were fought and won.

Our century is filled from end to end with the growth of the people's power, and the evolution of democracy must inevitably lead to Direct Legislation along the whole line.

The progress of civilization means the uplift of the common people. Once only the sovereign could make a law; all others were his subjects; now the people make some laws, influence to some extent the making of the rest, and have in *theory* the *right* to exercise the whole power of government; at last the theory will be realized and the people will be sovereign in fact as well as in name,—no laws will be made against their sovereign wish, and all laws their sovereign majesty desires will be enacted—a state of things impossible except thru Direct Legislation.

#### OBJECTIONS.

Objections to Direct Legislation are made by those who do not understand it—those who overestimate the effects of other reforms like proportional representation—those who think the referendum will interfere with the dignity and usefulness of councils and legislatures—those whose personal power would be diminished, or their private interests subjected to the public interest—those who object because of natural inclination to take the other side, or chance prejudice derived from dislike or opposition to the person bringing the matter to their notice or prominently advocating it in their neighborhood—those who are conservative by inherited mental inertia—those who object to change on the general principle that they are pretty comfortable as they are—and those who distrust the people and have aristocratic leanings.

Ignorance, prejudice, self-interest and doubt of democracy appear to be the sources of objection to the initiative and referendum. Given a clear understanding of the facts, the nature and workings of the referendum and of the unguarded system of lawmaking by final voting of the delegates, and the attitude on direct legislation depends on the answer the person would give in his heart to the question, "Shall the government belong to the people or to a class?"



## DON'T UNDERSTAND.

1. Some persons say, "*The Referendum will keep the people voting all the time, and the cost will be too heavy.*" They seem to imagine that the legislature of a state would go on passing six or eight hundred laws a year, and the people would have to vote on them all, and so it would cost an enormous amount of money and time. But we have seen that the great mass of laws is local, and should be left to the municipality, and if they were, the number would be small in each locality; and that the very existence of the referendum would remove the motive and opportunity which produces the greater portion of the laws which remain after subtracting the locals, so that the people of a city or state would not ordinarily have to vote more than once or twice a year, deciding anywhere from one to a dozen questions perhaps each time. After the change was fully made, this would be the case even under the obligatory referendum; and during the transition the optional referendum could be used, so that the amount of voting done by the people need not be heavy at any time.

Most of the referendum voting will probably be done at the regular elections, without additional expense of any amount. And the cost of petitions and whatever special elections may now and then be needed will be more than balanced by the great economies resulting from purer government and fewer laws. All this is clear in reason as we have seen, and has been proved in the history of Switzerland. But even if it were not so, the matter of cost is infinitely insignificant in the light of the political and social benefits of Direct Legislation.

During the campaign in South Dakota some of the citizens thought that the whole of the law to be voted on would have to be printed on the ballots and distributed to the voters. This, of course, is entirely unnecessary. The law can be published in the newspapers or in bulletin form and put within easy reach of all the people. The citizens can study its provisions at their leisure, and then a few words on the ballot to indicate clearly which law is being voted upon will be sufficient.

Finally, it must be remembered that to attain the end desired by Direct Legislation, it is by no means necessary that the people should vote on every measure passed by councils or legislatures; it is sufficient if they have the power to do so whenever they wish. The very existence of the power of popular revision and veto will obviate to a large extent the necessity for its use by preventing the passage or even the introduction of the great mass of corrupt and private bills which would have little chance of passing muster at the polls, and which if passed by the legislature or council would almost certainly be summoned before the people and vetoed by them. An officer does not ordinarily have to use his billy or pistol to stop a wrongdoer who is in possession of his senses. An employer is not obliged to keep suing or discharging his agents in order to get them to obey his instructions, the knowledge that the principal possesses the power to enforce his wishes impels the agents to respect them. So it will be with the people's wishes under the Referendum. The larger part of the most objectionable legislation will not have to be killed; it will die of discouragement and the powers of Direct Legislation will be invoked for the most part only to correct the honest errors of judgment on the part of legislatures and councils.

2. Some other persons who don't understand say that "*the referendum is a foreign affair, an un-American idea.*" The fact is, as we have seen, that the referendum has been practised in America from the beginning. But if it *were* a foreign idea, that would not prove it a false one. I never heard that the multiplication table, or the golden rule, originated in America. They seem to be foreign ideas, but they are pretty good ones, just the same. And even the steam engine is not indigenous to the soil, altho we find it quite useful and entirely worthy of adoption.

3. Sometimes Misconception says, "*So you think direct legislation is a panacea, do you? Well, you are altogether mistaken; it will not accomplish what you hope from it.*" The reply is that we do *not* deem Direct Legislation a *panacea*, but merely a very valuable remedy. It cannot of itself cure

all diseases incident to humanity, but it will greatly improve the circulation, purify the blood and give the natural recuperative power full opportunity; and *these* in time *may* cure the body politic completely. We *know* the referendum is *able* to accomplish what we hope from it, because it *has* accomplished it wherever it has been given the chance, both in Switzerland and in the United States.

4. A more specific objector may say, "*The referendum cannot overcome fraud and partisanship, for the power of appointment to thousands of lucrative offices will still remain in the hands of politicians and representatives.*" We have not claimed that Direct Legislation would, of itself, overcome *all* fraud and partisanship, but only *legislative* fraud and partisanship; administrative abuses would remain until the people adopted a proper civil service, the attainment of which would be greatly facilitated by the referendum, for nine-tenths of the people are strongly in favor of conducting public affairs on sound business principles. The referendum, of course, would not enable the people to *execute* the law in person. But abuse of administration is much more easily checked than corrupt *legislation*. You can tell what a man *does* much better than what he *thinks*. To discover the secret motive of a legislator is a far harder task than to watch the actions of a mayor or governor. In this important distinction lies a most vital political principle, of which the referendum is the full expression. The law will have to be administered by judges, police and other agents, whether legislation be direct or indirect. But once in full use, the referendum will substantially rid the country of legislative abuses, and give the people an easy path to the destroying of administrative abuses, especially if the Recall or Imperative Mandate be put in vigorous use along with the legislative forms of initiative and referendum.

#### OVERESTIMATE OF SOME OTHER REFORMS.

5. The second class of objectors tell us that *all we need to do is to elect better representatives—proportional representa-*

*tion and care in the selection of candidates will give us a good government without direct legislation.* It is true that much may be done along these lines; but they are not in themselves sufficient. We have already shown that representatives cannot really represent their sovereign, even with proportional representation and careful selection. Self-government can never be complete without Direct Legislation. Neither will the educating, simplifying and purifying effect of the referendum be attained with anything like the same ease and rapidity in any other way. We believe in the measures proposed by these persons, but the referendum is needed also; we are not willing to take a couple of spokes in place of a complete wheel.

#### DIGNITY OF COUNCILMEN AND LEGISLATORS.

6. The third class of objectors consists of honest legislators and their friends, who think that "*the dignity of councils and legislatures would depart with the advent of the referendum.*" We may remark, at the first, that if a measure is for the public good, the dignity of a legislature has no excuse for standing in the way; it must yield if it conflicts with a just and beneficial movement. But in the second place, it is perfectly clear that legislative dignity and honor will not suffer, but be exalted by the change. The dignity of a delegate to a constitutional convention is greater than that of a member of the legislature; yet all of the decisions of the convention are subject to approval by the people. The dignity and honor of the legislators in Switzerland is greater since the introduction of the referendum, because a nobler class of men go into politics. The referendum takes nothing from the power of the legislature but the power to keep the people from having the laws they want—nothing but the power to do wrong. The people will still desire the aid and advice of men of legal learning in the framing of their laws. They will revere the legislative lights more than they do now, because they will live in a purer atmosphere, and be farther removed from suspicion of self-interest, and be more likely to

be men of high ability and character on the average than now. In another way the referendum will help the legislature; when a law is passed that the people do not want, or a law is not passed that they do want, instead of their having to rise and turn out the legislators in order to obtain their will, they can leave the legislators quietly in their seats and turn down the law they object to, or propose the one they desire.

The referendum ought to commend itself to honest legislators, because it will do more than anything else to *lift* their profession out of the mire and free it from scandal, and because it is in line with the duty they owe to their sovereign. As Hon. Thomas McEwan told the New Jersey legislature in committee of the whole, January 29, 1895:

"It is only going back to first principles; all the government we have comes from it. We representatives are here only because the people believe we will do what they wish; that is why they sent us here. We are merely agents, bound in honor to do what our principals want done. It is our duty first to carry out their wishes as well as we can, and second, to recognize the fact that we may err, and to provide therefore a simple way in which the people may tell us whether we have done so. Sometimes in the best of legislatures laws are passed that are unsatisfactory to the people, and there ought to be an easy remedy in such a case, to enable the real sovereign to say that the work of his agents does not suit him. That simple remedy is the referendum."

#### WHAT USE WILL THE LEGISLATURE BE?

7. Another class of objectors is concerned not so much with the dignity of the legislature as with its usefulness. "*What is the use of councils and legislatures,*" they ask, "*if the people are to make the laws?*" One would think a person of ordinary common sense would not need to ask this question, yet it is asked time and time again by members of legislatures before whom the referendum amendment is advocated. The referendum leaves summary measures for health, peace and safety in the care of the legislators, as at present, and also leaves them full powers in every other direction, subject only to revision by the people. The legislature becomes the *emergency ruler* and the *universal advisor*—the most im-

portant advisory body in the commonwealth. Is that being of no use? You might as well say, "Of what use is a constitutional convention if the people are going to vote on the provisions it recommends?" or "Of what use is the architect if you are going to determine whether or no the plans he makes shall be carried out?"

These objectors sometimes put their questions thus: "*Why not accept the work of the representatives as final?*" This whole chapter is an answer; two reasons may be restated: First, because representatives are not *rulers*, but *agents*, whose plans should always be subject to the principal's orders. Second, because those who are *called* representatives are very often *misrepresentatives*, and the work they do is not in accord with the people's will, as is shown by the frequent reverses they meet in their candidacy for re-election, and by the disapproval of a considerable portion of their work when the referendum is applied to it. Even when the legislator does his best to represent the people he may not succeed, because of the difference in reasonings, interests and prejudices; and even if he succeeds, the fact cannot be known except thru an expression of opinion by the people.

#### THE CONSERVATIVES.

8. The attitude of some, if put into words, would be something like this: "*I'm pretty comfortable; let things alone.*" Such a position will not be taken, of course, by any man of sympathy and conscience—he must be satisfied that other men have comfort, liberty, justice; nor by any man of energy and intelligence, for he will not be satisfied with present conditions while improvement is possible.

9. The conservative does not generally put the true psychology of the position into words, but finds some specific fault with the movement. "*It is unwise.*" Read over this chapter, or the Summary Statement, please, and then look me straight in the eye and say "The referendum is unwise." If you can do that and give me a *reason* for such opinion other than a mere prejudice or misconception or selfish interest, I will do my best

to have your name enrolled in the list of great discoverers. Some people, when they do not like a thing, but have no reason fit for publication, are accustomed to look very solemn and say, "It is unwise."

10 "*It is cumbersome,*" another conservative says. Well, let us see. Which is the most cumbersome? to vote on a few simple propositions now and then, or to pile up five hundred laws a year in state after state? to sign a few petitions and register a few decisions, or to bear the burdens of corrupt legislation, lobby-made law, bosses, rings, machines, party despotism, private monopoly of government?

11. "*It is dangerous to capital,*" says another. No, not dangerous to *capital*, but dangerous to the unfair acquirement, unjust distribution and corrupt use of capital—not dangerous to good wealth, but very dangerous to bad wealth, or rather, to the schemes of the owners of it.

12. Another who has an aversion to change as a thing that is totally opposed to his constitution and by-laws, looks at the referendum and some of its claims, perhaps, and remarks in a fretful or maybe a pugilistic tone, "*Things are getting better, why can't you let 'em alone.*" They never would have got any better if they *had* been let alone, and the less they are let alone the faster they'll get better. These conservatives talk about the referendum and other needed reforms just as the Chinese talk about the introduction of the railroad. "The locomotive is a noisy monster. It screeches and keeps people awake. The railroad will overturn our methods of transportation and destroy the dignity of our carts and palanquins. The manners of the trainmen are bad, and traveling in the cars makes many people ill. Sometimes persons are killed by passing trains and property rights are disturbed by railroads. It is true that they carry freight and passengers more quickly and cheaply than our methods can, and people would get what they want when they want it more nearly than now, but that is nothing compared to the noise and trouble of change." It is almost impossible to convince these chronic rebels against progress, because it is not a matter of reason with them, but of feeling. Logic is a thing they have little

acquaintance with, or congeniality for, if it threatens their ease or impinges upon their mental, moral or physical inertia.<sup>1</sup>

The final answer to all the conservatives is that Direct Legislation is more conservative than unguarded representation. The people would pass some laws that the representatives would not, but they would refuse to pass a far larger number that the representatives would and do enact, many of them the most dangerous and radical private and class enactments.

In the ten years from 1874 to 1885, eighteen measures passed by the government of Switzerland were sent to the referendum, and thirteen of the eighteen were rejected. Other facts of the same nature will be found in the section on "The Use of the Referendum." Boyd Winchester says: "The history of the referendum confirms the fact that as a rule the people are not favorable to legislation, and that the necessity must be great and the good ends aimed at very manifest to withstand direct consultation of the constituencies."

#### DISTRUST OF THE PEOPLE.<sup>2</sup>

13. "*Hasty Legislation!*" says one of those who doubt democracy. "The people will pass all sorts of laws without sufficient consideration." For answer, in addition to what has just been said, take this from Sir Francis Adams, British Minister to Berne, Switzerland:

"The referendum has struck root and expanded wherever it has been introduced, and no serious politician of any party would now think of attempting its abolition. The conservatives, who violently opposed its introduction, became its earnest supporters when they found that it undoubtedly acted as a drag upon hasty and radical lawmaking."

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<sup>1</sup> There is a class of people who would not like to be classed as conservatives (and some of them really have progressive ideas of a timid, hesitating variety) who tell us they "believe in the Referendum, it will be a good thing when the time comes, but we are not ready for it yet." Not ready for it! Not ready for pure government in place of corruption? Not ready for a means of checking the overgrown power of monopolists and politicians? Not ready to stop misrepresentation and establish a real republic in place of an elective aristocracy? Not ready to let the sovereign people say what they want? *America* not ready to take a progressive step already successfully taken in Switzerland? Bless you, friend, invent something else.

<sup>2</sup> For a discussion by Eltweed Pomeroy, throwing additional light on the inadequacy of the objections to Direct Legislation, see "Objections Answered," *Arena*, vol. 22, p. 101, appearing after this chapter was in type.



And this from Professor Bryce's chapter on Direct Legislation in the United States:

"A general survey of this branch of the inquiry leads me to the conclusion that the people of the several states in the exercise of this, their highest function, show little of that haste, that recklessness that love of change for the sake of change with which European theorists, both ancient and modern, have been wont to credit democracy."

14. Another objector tells us that "*The people are not competent to make the laws. Many laws are too complicated for the people to understand; it takes lawyers to comprehend them.*"

Exactly, and that is the kind of laws we want to stop. What right has a court or policeman to arrest and punish me for violating a law I can't understand, even if I read it and study it? Have I to get a lawyer to explain the 13,000 odd statutes to me every year? It wouldn't protect me if I did; for the lawyers don't know what the laws mean a good deal of the time, and are continually wrangling over them; the legislators that have passed them don't know what they mean, but have to ask the supreme court; and even the judges have a good deal of trouble to find out the meaning, and frequently disagree among themselves about it. It's these complicated laws which people can't understand that we are going to get rid of (for one thing) with the referendum.

But there is another answer to this objection: Even if some of the laws submitted are complicated and the people consent to consider them on their merits instead of ordering them back for simplification, as they would be apt to do, still we have seen by the records that there is an automatic disfranchisement of the unfit in most referendum votings, which is the reverse of what takes place in many legislative votings on private measures, etc.

Moreover, it is hard to see why it is any more difficult to vote for a complicated measure than for a *complicated man*—to vote for a man under present conditions is to vote for a whole statute book full of complicated measures, many of them not yet formulated or even dreamed of.

15. There are people who have *no faith in popular government*, regard it as dangerous to property and likely to result in unjust revolutionary measures—“*government by holding up of hands*,” “*mob-rule*,” etc., and would like, with Carlyle, to hear the people cry, “O, my superiors! my heroes! come down and rule me as thou seest best! *compel* me to do thy sovereign will”—provided *they* were recognized as among the heroes.

Carlyle and all his spiritual relations have missed these two great truths: First, mankind has discovered that no man can be trusted to govern others according to his own sweet will, or even to decide what the people's interests are; for prejudice and self-interest and narrow knowledge make it impossible for any one but the people themselves to give a correct decision on that point; even the people may not always judge rightly, but if they have reached a reasonable degree of development they'll come much nearer to the truth for themselves than any one else can be trusted to come for them. Second, the true ideal is not a society in which the masses of the people are incapacitated for self-control, but a society in which every citizen is capable of self-government; wise enough and good enough to be worthy of a voice in the management of the social partnership. We *do* want government by our heroes, but we also want government by all for all; and the only way to combine the two is to make all men heroes. It was for that, ultimately, that the world dethroned its monarchs, and gave the scepter to the mob. After humanity has so far developed that democracy does not involve an irretrievable loss of progressive power, then the only way to transform the mob into manhood and make it completely worthy of sovereignty is to place the burden upon it and let the responsibility mould it into fitness for the work. The people will learn how to govern themselves much faster by doing it than by watching the politicians do it, just as a boy will learn how to skate or to play the cornet far better by skating or playing himself than by looking at some one else perform.

The Carlylians fail to note that

Self-government is necessary,

1st. For liberty and justice.

2d. For education and manhood.

The people of the United States are not a mob; they have not on the average so much genius as Carlyle, but they have better digestion and more common sense.

16. To pursue this topic a little further, some of these people who would reverse the wheels of progress, undo the whole of modern history, abolish manhood suffrage and establish a high property qualification or some other sort of recognized aristocracy—some of these radical retrogressional objectors to popular sovereignty, the sovereignty of the people, say that Direct Legislation is “*a new trick to get wisdom out of foolishness.*” Well, you can get it out of foolishness sooner than out of corruption. But it will not come out of foolishness. The average American citizen is quite equal in sense to the average politician; much more progressive, and vastly superior in morality. He does not know so much of legal forms as the legislator, and he won’t refuse the guidance of the legislator in that respect; but when a law is formulated, he can tell whether it will suit him or not a great deal better than the legislator can, even if the latter is perfectly honest.

If the masses of people are a condensation of foolishness, it is curious that the greatest legislators all over the Union should spontaneously and unquestioningly have entrusted them with the adoption and amendment of the fundamental laws of the states, the constitutions. And if the people can be trusted with the settlement of the great principles of government, as experience has shown that they can be, surely they can be trusted to determine the by-laws.

Moreover, the people do continually act upon the by-laws, in town-meetings, city votes and the election of candidates on party platforms. It will not be so difficult to vote on each issue separately as to decide about three or four platforms, with many issues in each, plus the personalities of several candidates. It requires more intelligence to arrive at a clear judgment on a lengthy platform than on propositions submitted singly. Direct Legislation will simply enable the people actu-

ally to accomplish in an easy, inexpensive and scientific way what they are and in this country always have been endeavoring to accomplish in a very rough, expensive and ineffective way.

#### PERSONAL INTEREST.

17. Another class of objectors consist of *politicians, monopolists, lobbyists*, and others who realize that their selfish interests would be injured by the referendum, or, in fact, by any improvement in legislation tending to bring it into closer harmony with the public good. The motives of this class are not very fragrant, but it is at bottom the most rational of all the classes we are considering, for there is no doubt of the correctness of the idea on which their opposition is based. Of course they do not say much about the real foundation of their objection. They do not say, "*We are making a good thing out of the present system of legislation, and we don't want to let the people in; we don't want so many partners on the ground floor.*" Instead of such a frank avowal, they adopt the errors and sophistries of preceding classes, and ring the changes on "*complicated laws,*" "*hasty legislation,*" "*foreign idea,*" "*too expensive,*" adding, perhaps, that the words "*initiative and referendum*" are pedantic and un-American, which may be true, but has no more to do with the nature of Direct Legislation and the advisability of adopting it than a man's name has to do with his character and the wisdom of employing him to clear out your stable or build your house.<sup>1</sup>

18. "*It is impracticable,*" I have heard monopolists and politicians say. Get out your statute books and your histories

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<sup>1</sup> Persons of this class have even been known to say to the advocates of the referendum, "You propose then that five per cent. of the voters shall overrule the will of the majority?" Such was the question of the chairman of the Senate Judiciary Committee, in a legislative investigation, Feb. 12, 1895. Did he really think that was what the referendum would do? or was he trying to "bluff" the witnesses—a game which could only work in case of their sublime ignorance, and the equally colossal incapacity of the listening legislators, who were to be influenced by the chairman's question. In either case, if we have legislators who can ask or be influenced by such questions as the above, after having the amendment carefully read to them, and knowing that the only right given to 5 per cent. of the voters is the right to *petition* that a matter be submitted to the people for the very purpose that the will of the majority may rule instead of the will of the minority, as is possible when such a vote is not taken—if we have such legislators, it is surely a powerful reason for some change that shall take the right of final decision away from such men.

and see. Read Oberholtzer's "Referendum in America" and your authorities on constitutional law. You monopolists of government and industry know very well that the referendum is practicable, and that you are afraid of it.

19. "*Because it works in Switzerland is no sign it will work here.*" Yes it is *some* sign that it will work here. The fact that it works in Swiss cities and cantons and in the nation is a pretty good sign that it will work in our cities and states. But we do not need this sign, for we have a better one, viz., that it *has worked* in our cities and states in numerous trials extending thru many years, and all we ask is a fuller use of what we have abundantly shown our ability to use. We have proved that we can swim; untie the rope. As to the nation the problem may not be as clear as we might desire, but the referendum in city and state comes first, and that is perfectly clear; the rest will be equally clear when we come to it.

20. "*Direct legislation violates the representative principle.*" This is not true; direct legislation is necessary to the perfection of representation. It is lawmaking by final vote of the delegates that violates the representative principle by producing innumerable *misrepresentations*. Speaking of this objection Mr. Moffett says:

"The Teutonic device of representation was such a convenient substitute for the unwieldy popular mass meeting that it gradually came to be looked upon as a political end in itself, instead of as a convenient means of enabling the electorate to evade the limitations of time and space. . . . The representative system is a convenient medium for the transmission of political power, just as a system of shafts and pulleys is a convenient medium for the transmission of mechanical power, and it would be precisely as reasonable to object to a plan for gearing a generator directly to the machine it was to work as a violation of the shaft-and-pulley principle, as to object to a practicable plan of direct legislation as an infraction of the principle of representation."

21. "*It would reduce the legislature to an advisory body.*" Not quite; it would be advisory as to matters which went to the people, and acting agent as to the rest. To make the legislature more than an advisory body as to measures on which the people wish to express themselves, is to give the

legislature the power of overruling the people and make them sovereign in place of the people.

22. *"The people can't frame the laws for an initiative; they don't know enuf."* There are plenty of experts the people can get to do that. The people can tell whether the law is what they want when it is framed, and that is the important matter for them.

23. *"The people don't want to vote on measures; the vote is always smaller than for candidates."* Not always, but usually it is so, because, as a rule, the less intelligent do not understand the referendum and omit to vote. But this does not show any lack of desire for the referendum on the part of the great mass of the people. On the contrary, the growth of the demand for direct legislation exceeds anything in the history of reform.

24. One of the great standbys of the more intelligent of the supporters of the legislative aristocracy is the assertion that *"the referendum will be unconstitutional, because it is not a republican form of government."* If so, every state in the Union, except Delaware, has violated the federal constitution by adopting and amending its state constitution thru the referendum, and there is only one valid state constitution in the land, the rest being void, because made in violation of the federal law. We have seen that Jefferson declared that the republicanism of a government is proportioned to the direct action of the citizens in it,<sup>1</sup> wherefore no form of government can be completely republican without Direct Legislation; and instead of forbidding Direct Legislation the National Constitution requires its adoption in every state of the Union, if the guarantee of republican government in every state is to be completely and perfectly fulfilled.<sup>2</sup>

<sup>1</sup> "Government is more or less Republican in proportion as it has in its composition more or less of this ingredient of direct action of the citizens." (P. 605, Vol. VI, of the H. A. Washington Edition of Jefferson's writings.)

<sup>2</sup> The Standard Dictionary, latest of all, says: "Republic: A state in which the sovereignty resides in the people, and the administration is lodged in officers elected by and representing the people, \* \* \* sometimes military, as in Sparta and the earliest Roman republic, sometimes a well nigh pure democracy, as in the first French republic, or as in Switzerland, with its referendum."

The usage of English speaking peoples fully justifies the definition, for the Greek democracies, where the people made the laws, and even sat "en masse" to exercise the judicial function, are everywhere spoken of as

25. Thus all objections utterly fail, and the mighty array of positive arguments is left without a breach. To pass the main points in brief review:

The referendum will abolish monopoly in lawmaking, make plutocracy impossible, establish a real government by the voters, open the way to new reforms, bar the path of fraud, rout the lobby, weaken the corrupting power of wealth and monopoly, keep the representative to his duty, rebuke partisanship, make gerrymandering useless and a deadlock impossible, discourage favoritism, extravagance and legislative theft, lower taxation, cut down exorbitant salaries and in every way conduce to an economical administration of public affairs, decentralize power, simplify elections and the law, stop the killing or shelving of bills in committees and the passage or introduction of blackmailing acts, save much of the time now wasted in party disputes, personal politics and angry debate, favor stability and careful legislation, disclose the strength of malcontents and afford a safety valve to discontent, elevate the press, educate the people intellectually and emotionally, develop their reason, sense, dignity and patriotism, make the public welfare hinge directly on the morality and intelligence of the masses and bring the best men to the front as their leaders.<sup>1</sup>

Experience, reason and the drift of public sentiment combine to emphasize the value and importance of the referendum, and after all it is simply the putting in practice of the American idea of the sovereignty of the people. The federal constitution begins "We, the people, do ordain and establish."

republics. Webster's dictionary calls them republics. And Switzerland, the land of the referendum, is known the world over as the "model republic."

In South Dakota and Oregon, where direct legislative amendments have been passed (and in S. Dakota adopted) there has been no claim of unconstitutionality by the opponents of the measure.

If Direct Legislation was unconstitutional, it would not prove anything except the necessity of amending the constitution.

For a fuller treatment of this objection, see my chapter on Objections in Senate Document, 340, 55th Congress, second session, July 8, 1898, pp. 146, 8.

<sup>1</sup> *Nomination by direct ballot or petition of the people*, instead of nomination by party caucus or convention, will help to make public spirit and fitness for office the vital elements in the selection of candidates instead of particular service and corporate or factional allegiance. The separation of state and municipal elections by some weeks or months, and insistence on electing local officers on local issues and not upon national issues will also aid in the due subjection of party. Everything that tends to overcome the rule of blind unthinking partisanship ought to be welcomed by all true-hearted public spirited citizens.

The first clause of Jefferson's formula for democracy is, "The people to be the only source of legislation." Napoleon's eagle vision caught the truth when he said: "Free nations have never allowed the direct exercise of their sovereign power to be taken from them. This new invention of the representative system destroys the essential base of a republican commonwealth." May the time soon come when we shall make good our loss, and the budding flower of liberty shall bloom in full perfection!

Let us work for

Direct legislation by the people.

Direct nominations by the people.

Direct and immediate recall of recreant officers by the people.

i. e.

Instruction, veto,

selection, discharge

by the sovereign people.



## APPENDIX

### LEGISLATIVE FORMS.

#### *Forms of Constitutional and Statute Provisions Relating to Direct Legislation.*

##### DIRECT LEGISLATION LAWS AND AMENDMENTS.

###### *South Dakota Amendment.*

I. The Constitutional Amendment recently adopted (1898) by the people of South Dakota is as follows:

Section 1. (Amendment.) That section one of article three of the constitution of the State of South Dakota be amended so as to read as follows:

Sec. 2. (Questions submitted.) The legislative power of the State shall be vested in a legislature which shall consist of a senate and house of representatives, except that the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the State, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the State before going into effect (except such laws as may be necessary for the immediate preservation of the public peace, health or safety or support of the State government and its existing public institutions).

*Provided*, That not more than 5 per centum of the qualified electors of the State shall be required to invoke either the Initiative or the Referendum.

This section shall not be construed so as to deprive the legislature, or any member thereof of the right to propose any measure. The veto power of the executive, shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the State shall be, "Be it enacted by the people of South Dakota." The legislature shall make suitable provisions for carrying into effect the provisions of this section.

Sec. 3. (Submission.) This amendment shall, if agreed to by a majority of the members elect of each house of the legislature, be submitted to a vote of the people at the next general election.

For text of the law passed to carry out this amendment, and of laws proposed in Dakota, and by the National Direct Legislation League, see Direct Legislation Record, June, 1899 and March, 1898, published by Pres. Eltweed Pomeroy, Newark, N. J.

*Comment.* The 5 per cent. limit is wise and the application of Direct Legislation to municipalities also. The latter provision might be fuller and more definite with advantage. The "enact and submit" clause is not as good as a provision that if the legislature amends or does not pass the measure petitioned for, the Governor shall submit, etc. The minimum time within which laws shall go into effect should be stated. And it should be specifically provided that the Initiative and Referendum may be used to amend the constitution; and that laws enacted by the people shall not be repealed or altered without submission to them.

Oregon is the second state to have a Direct Legislation Amendment passed by both houses of the Legislature. If approved by the next Legislature, it will be voted on by the people in 1902. The movement appears to be entirely non-partisan in Oregon.

###### *The Oregon Direct Legislation Amendment.*

SECTION 1. The legislative authority of the State shall be vested in a legislative assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves power to propose laws and amendments to the constitution, and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the Initiative, and not more than 8 per cent. of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State not

less than four months before the election at which they are to be voted upon. The second power is the Referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by petition signed by 5 per cent. of the legal voters, or by the legislative assembly as other bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than 90 days after the final adjournment of the session of the legislative assembly which passed the bill on which the Referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be held at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon and not otherwise. The style of all bills shall be, "Be It enacted by the people of the State of Oregon." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for Justice of the Supreme Court at the regular election last preceding the filing of any petition for the Initiative or for the Referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the Initiative and for the Referendum shall be filed with the Secretary of State, and in submitting the same to the people he and all other officers shall be guided by the general laws and the act submitting this amendment until legislation shall be specially provided therefor.

Utah is the third State to pass (1899) a Direct Legislation Amendment, which is to be submitted to the people at the next general election. The amendment is not as definite as it should be; too much is left to Legislative provision, even the number or percentage of petitioners is not fixed, and a two-thirds vote of the Legislature excludes Direct Legislation entirely. Yet with all its defects it is much better than no Direct Legislative provision, for every Direct Legislation measure, however poor, secures important vantage ground for the obtaining of a better Direct Legislation measure.

#### *The Utah Direct Legislation Amendment.*

BE IT RESOLVED and enacted by the legislature of the Senate of Utah, two-thirds of all the members elected to each House thereof concurring therein:

Section 1. That Section 1 of Article 6 of the Constitution of the State of Utah, to be amended to read as follows:

Section 1. The legislative power of the State shall be vested:

1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.

2. In the people of the State of Utah, as hereinafter stated.

The legal voters or such fractional part thereof, of the State of Utah as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to the vote of the people for approval or rejection, or may require any law passed by the Legislature (except those laws passed by a two-thirds vote of the members elected to each house of the Legislature) to be submitted to the voters of the State before such law shall take effect.

The legal voters or such fractional part thereof as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law-making body of said legal subdivision to be submitted to the voters before such law or ordinance shall take effect.

Sec. 2. Also, that section 22, of Article 6, of the Constitution of the State of Utah be amended to read as follows:

Sec. 22. The enacting clause of every law shall be "Be It enacted by the Legislature of the State of Utah." Except such law as may be passed by the votes of the electors as provided in subdivision 2, section 1 of this article, and such laws shall begin as follows: "Be It enacted by the people of the State of Utah." No Bill or Joint Resolutions shall be passed, except with the assent of the majority of all the members elected to each house of the Legislature, and after it has been read three times. The vote upon the final passage of all bills shall be by yeas and nays; and no law shall be revised or amended by reference to its title only; but the act as revised, or section as amended, shall be re-enacted and published at length.

Sec. 3. The Secretary of State is hereby ordered to cause this proposition to be published in at least one newspaper in every county in the State where a newspaper is published, for two months immediately preceding the general election.

Sec. 4. This proposition shall be submitted to the electors of this State at the next general election for their approval or rejection. The official Ballots used at said election shall have printed thereon, "for the amendments, sections 1 and 22 of article 6 of the constitution," "against the amendment, sections 1 and 22 of article 6 of the constitution," and such designation of title as may be provided for by the law. Said ballots shall be received and said vote

shall be taken, counted, canvassed and returns thereof be made in the same manner and in all respects as is provided by law in case of election of State officers.

In 1897 Nebraska enacted a Direct Legislation statute applying to municipalities by local option. It is over long and full of detail, requires 15 per cent., which is too high, and gives the councils the right by a two-thirds vote to alter or annul an act of the people after one year from the vote at the polls.

The Direct Legislation sections of the New Freehold Charter of San Francisco, are as follows:

*The Direct Legislation Sections of San Francisco's Charter.*

Section 20. Whenever there shall be presented to the Board of Election Commissioners a petition or petitions signed by fifteen per cent. of the legal voters at the last preceding general election of the city and county, equal in number to fifteen per cent. of the votes cast at the last preceding general election, asking that an ordinance to be set forth in such petition, be submitted to a vote of the qualified voters of the said city and county, it shall be the duty of the Board of Election Commissioners to submit such proposed ordinance to the vote of the qualified electors of said city and county at the next election.

The signatures to said petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true, and that each signature to said paper appended is the genuine signature of the person whose name purports to be thereto subscribed.

The ballots used in such election shall contain the words "For the Ordinance" (stating the nature of the ordinance) and "Against the Ordinance" (stating the nature of the ordinance).

If a majority of the votes cast upon such ordinance shall be in favor of the adoption thereof, the Board of Election Commissioners shall within a reasonable time, not exceeding thirty days, proclaim such fact, and, upon the publication of such proclamation, such ordinance, thus adopted, shall have the same and equal force and effect as an ordinance adopted and ordained by the Board of Supervisors and approved by the Mayor, and the same shall not be repealed by the Board of Supervisors. But the Board of Supervisors may submit a proposition for the repeal of such ordinance, or for amendments thereto, for vote at the next election; and should such proposition, so submitted, receive a majority of the votes cast thereon at such election, such ordinance

shall be repealed or amended accordingly.

Sec. 21. Upon petition of 15 per cent. of the legal voters of the city and county of San Francisco to the Board of Supervisors, it shall be the duty of the said board to submit to the qualified electors of said city and county any amendment or amendments to this charter as set forth in said petition.

The Board of Election Commissioners shall make necessary provisions for submitting such amendment or amendments to the qualified voters, as herein provided, and to canvass the vote in the same manner as herein provided for the canvassing of other election returns.

*The Detroit Charter Law.*

In Michigan the Direct Legislation League did not quite succeed in obtaining the passage of a Direct Legislation Amendment by the last legislature (1899), but they did secure an act by which the people of Detroit can amend their own charter. The Common Council on its own initiative may submit a charter amendment to a referendum of the people or 5,000 voters by an initiative petition may force the Council to submit a charter amendment.

On the urging of the League, the Common Council on August 2d, by a unanimous vote, agreed to submit at the November election the following amendment to the people of Detroit:

"The Common Council of the City of Detroit shall not grant to any person or corporation a franchise; nor extend the life of any existing franchise for the use or control of any public utility, unless such franchise shall have been first submitted to a vote of the people of said city, and until the same shall have been approved by a majority of the electors of the municipality voting thereon at such election. All grants in contravention of this provision, and which shall not have been first submitted to a vote of the people and approved by a majority of the electors voting thereupon, shall be null and void. The Common Council of said city may in its discretion submit to the electors of said municipality, either at a general or a special election called for that purpose, any proposition embodying the granting of rights, privileges or franchises for the use or control of public utilities in the City of Detroit.

"Provided, that any one and all propositions which are to be submitted to a referendum vote shall be published, by title and in full at least once a week for eight successive weeks immediately preceding said election, in at least four newspapers published in the City of Detroit, and at least six half-sheet poster notices displayed conspicuously in each

precinct of the city; and the Common Council may require that any or all expenses thereby entailed shall be paid by the party or parties applying for franchise. And be it further

"Provided, That this amendment shall not apply to the granting of any franchise for an extension not exceeding one and one-half ( $1\frac{1}{2}$ ) miles in length on any street where a street railway franchise exists, for a term equal to the unexpired term of the franchise on the line so extended."

In Pennsylvania, 1899, the Direct Legislation League and prominent members of the Municipal League of Philadelphia tried to secure the passage of the following bill, subjecting franchise grants to referendum petitions. It was reported favorably in the House and passed first reading, but in the Senate it died in committee.

*Franchise Direct Legislation Bill Proposed in Pennsylvania.*

An act providing that no ordinance for the sale of real estate or for a lease or contract covering more than five years or for granting a franchise shall be operative in any city until it shall have been approved by a majority of the voters, if such approval shall be demanded within sixty days by three thousand voters, or by a number equal to five per cent. of the total of votes cast at the last preceding election, and providing for the submission of such ordinances to the voters at general or special elections.

SECTION 1. Be it enacted, etc. That from and after the passage of this Act, no ordinance for making or authorizing a sale of real estate or a lease or a contract covering more than five years, or for granting a franchise to perform a public service, or make use of public property, shall be operative in any city of this Commonwealth until after sixty days from the date of its passage; and if in any such case and during such period of sixty days three thousand of the qualified voters, or a number equal to five per cent. of the total number of votes cast at the last preceding election in such city shall demand that the ordinance shall be submitted to a Referendum, or direct vote of all the voters, such ordinance shall not be valid or operative until it shall have been so submitted and approved by a majority of those voting upon it.

SECT. 2. In every such case the papers containing the demand for the Referendum, or direct vote, shall be filed with the County Commissioners within the time specified, and each signer shall write his occupation and residence after his signature, and the genuineness of the signatures on each paper must be attested by the affidavit of a qualified voter.

SECT. 3. Such submission of an ordinance shall be made at the next regular election or at a special election to be held within ninety days of the fil-

ing of the Referendum papers, as the County Commissioners may determine.

SECT. 4. In every such Referendum the County Commissioners shall have clearly printed upon the official ballots the title of the ordinance, with the words "For" and "Against" in conspicuous capital letters, and each of the said two words shall be followed by a square enclosed space for the voter's mark.

SECT. 5. Except as herein otherwise provided, every such election shall be governed by the general laws of this Commonwealth.

SECT. 6. All laws and parts of laws inconsistent with this Act are hereby repealed.

*Direct Legislation. General Amendment.*

§1. On petition of 5 per cent. of the voters of the State (measured by the vote at the last preceding general election) proposing any law or amendment to the Constitution, or demanding the referendum on any law passed by the Legislature, the Governor shall cause such law or amendment to be submitted to the people at the next election, for adoption or rejection at the polls. A law enacted by the Legislature shall not go into effect till 90 days after passage and publication, nor until approved by the people, if within said 90 days a 5 per cent. petition for the referendum on it is filed with the Governor; *provided*, that this 90-day rule shall not apply to mere matters of routine which are substantially the same at every session, and that urgency measures necessary for the immediate preservation of the public peace, health or safety, may be passed by a  $\frac{2}{3}$  vote of the Legislature and may take effect at once, and shall be valid and effective during the time necessary to submit the matter to a referendum, if one is called for, and until repealed or altered at the polls or by the Legislature.

§2. These provisions shall apply to cities and towns, reading *Municipality* for "State," *ordinance* in place of "law," *charter* for "Constitution," *mayor* for "Governor," *councils* for "Legislature," *30 days* instead of 90 days.

§3. Subject to the popular veto as above, the Legislature may enact such laws as may seem needful to enforce these provisions, and establish such penalties for forging

names on initiative and referendal petitions, or taking names of non-voters upon them, as may be required to protect the purity of such petitions.

§4. All officers in charge of printing ballots or otherwise connected with elections, shall accord every reasonable facility in their power and do every act necessary for the clear, concise and accurate printing of referendal questions upon the ballots, the thoro information of voters upon the questions to be decided, and the thoro working out of the substance and spirit of this amendment.

[It would be more in harmony with common usage to make the petitions returnable directly to the city clerks and the Secretary of State (or other officers in charge of printing ballots) instead of sending them to the Mayor or Governor; but we suggest that the latter plan has some advantages in respect to the atmosphere and dignity of the petitions and the sentiment that gathers about them, and in respect to holding the executive (the most carefully selected officer in city or State) directly responsible for the due execution of the all-important referendum law.]

The South Dakota precedent of 5 per cent. initiative and referendum petitions may be found too high in more populous States. If it so appears when direct legislation is put in operation it will be easy to reduce the per cent. for State petitions or petitions in very large cities, or adopt a fixed number as suggested on p. 300 in analogy to the law by which 10 citizens of a New England town may by petition have any municipal matter they choose put in the warrant and brought before the town meeting.]

#### *Municipal D. L. Specific.*

##### **Referendum.**

§1. Ordinances and acts of city councils (excepting matters of routine and urgent measures for public health or safety) shall not go into effect for 30 days after passage and publication, and, if within that time 5 per cent. of the voters of the city petition the executive for a referendum on any such act or ordinance, it shall not go into effect until approved by the people at the polls. Questions raised by such petitions shall be thoroly publisht thru newspapers and posters or equivalent means for at least three weeks and shall then be submitted at the next regular election, or at a special election 6 to 15 weeks after filing the

petition, provided 15 per cent. of the city's electors ask for such special election and deposit funds to pay for it. The mayor or 1/3 of either council may order a referendum, and the mayor, with 1/3 of councils, may order a special election.

##### **Initiative.**

§2. Any desired ordinance may be proposed for decision at the polls by 5 per cent. petition of the city's voters filed with the executive, publication and submission being governed by the same provisions as in §1.

§3. All grants, extensions or renewals of important franchises (such as water, gas, electric light, railway, telegraph and telephone privileges) *must* be submitted to the people.

§4. A measure rejected by the people cannot be again proposed the same year by less than 20 per cent. of the voters, nor substantially re-enacted by councils, except by 2/3 vote and then *must* go to the polls without petition; nor shall a measure approved by the people be altered or repealed without a referendum: *Provided*, however, that councils by 2/3 vote may adopt urgency measures for the immediate preservation of the public peace, health or safety, to be valid during the time necessary to submit the matter to a referendum, if one is called for.

##### **Local Option.**

§ 5. These provisions shall apply to any city upon their adoption by the electors, and the executive *may* and upon 5 per cent. petition *shall* submit the question of their adoption to the voters at the next election.

(If it is desired to make the provisions absolute and not subject to local option, the fifth section should be omitted.)

##### *City D. L. Crisp.*

§1. Either Council may, and on petition of voters of the city amounting in number to 5 per cent. of the votes cast at the preceding city election, *shall* submit to the voters for decision at the next city election (or at a special election if

so ordered by council or by 15 per cent. petition of voters) any question which might lawfully come before such council.

[A bill composed of this section all by itself (except of course the opening and closing phrases common to all bills) might prove an excellent first step where D. L. sentiment is not strong enough in the legislature to carry a more extensive measure. The gain will be greater however if a bill can be passed including one or more of the following sections. It is a good plan to have two or more bills introduced by different members, and get the best law the legislature is willing to enact.]

§2. The mayor may, and on petition as aforesaid, *shall* submit any municipal question at the next city election (or at a special election if he chooses or it is ordered by either council or by 15 per cent. petition).

§3. Ordinances or acts of councils shall not take effect for thirty days after passage and publication, nor until approved at the polls if a 5 per cent. petition for referendum thereon be filed within the thirty days: *Provided, however*, That this 30 day rule shall not apply to matters of mere routine and that coun-

cils by a 2/3 vote may adopt urgency measures necessary for the immediate preservation of the public peace, health or safety, which may go into effect at once and remain in force till repealed or modified by councils or by referendum.

§4. Petitions may be addressed to the mayor or either council and entered in the office of the city clerk, who shall record their nature and date of entrance and transmit them to the authority addressed. It shall be the duty of such authority and also the duty of the city clerk to see that questions duly called for are concisely and clearly printed on the ballots, and all officers connected with elections shall afford every reasonable facility and do every act within their scope that is necessary to carry out the spirit and purpose of this act.

[Sections 1 and 2 might be combined — *The mayor or either council may, or \* \* \* shall \* \* \* (special election ordered by mayor or \* \* \*) any question which may lawfully come before (or be dealt with by) the legislative authorities of the city, or that one of them ordering or petitioned to order the referendum.*]

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